A TREATISE
ON THE
LAW OF LABOR UNIONS

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A TREATISE ON THE LAW of LABOR UNIONS

Containing a Consideration of the Law Relating
to Trade Disputes in All Its Phases, Internal
Administration of Unions, Union Labels,
and a Collection of Approved Forms
of Pleadings, Injunctions and
Restraining Orders

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TO
THE MEMORY OF MY MOTHER
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Preface

Few branches of modern law are of greater importance than that relating to labor unions, and none present more difficult questions for solution, than that part of it which relates to trade disputes. The great increase of litigation in recent times is demonstrated by the fact that the earliest case of which there is any mention was decided prior to the year 1720, and that most of the cases on the subject have been decided within the past two decades. This increase is due to the recent tremendous growth of combinations, both of labor and capital, and to the new questions which are continually being presented for judicial settlement because of the changed economic conditions resulting therefrom.

The principal questions in labor union law, in the order of their relative importance are, 1st, The law relating to trade disputes. 2d, The law relating to the internal administration of unions. 3rd, The law relating to the protection of union labels. In respect of the two latter subdivisions, no questions of particular difficulty are presented, although the courts have not always been in entire accord on questions relating to union label law. There is, however, a great lack of harmony in the decisions relating to trade disputes, and many of them, it is believed, are erroneous in principle, and oppressive and unjust to organized labor. In this category may be placed decisions which hold without qualification that strikes or threats of strikes to procure the discharge or prevent the employment of workmen are unlawful and criminal, as being an unwarrantable interference with the business of the employer, and an invasion of the rights of the workmen against whom these acts are directed,¹ denying unions the right to exercise disciplinary measures, in accordance with their rules and by-laws, to compel insubordinate members to join in a lawful strike or continue on strike after going out,² holding that all picketing is unlawful,³ enjoining unions at the instance of an employer against whom a strike is in operation from giving strike pay or using its funds in furtherance of picketing,⁴ requiring defendants against whom a writ of injunc-

¹ See section 35.

² See section 148a.

³ See section 168.

⁴ See section 65.

tion defective and ambiguous in its terms has been awarded, to ascertain—or more properly speaking to attempt to ascertain—what is prohibited by reading the writ in connection with the bill,⁵ refusing the protection of courts of equity to prevent the infringement of union labels, in the absence of special legislation expressly designed for their protection,⁶ and holding that the words “union-made” on a label import that the goods to which the label is attached were owned or manufactured or sold by the union itself and that the placing of such words on a label does not satisfy the requirements of a statute designed for the protection of union labels, which provides that the label must announce that the articles to which they are attached were made by a member or members of the union adopting the label.⁷

On the other hand there are decisions in which the courts seem to have erred on the side of organized labor. Thus there are a limited number of decisions which hold that a combination of workmen may withhold or threaten to withhold their patronage or labor from those who have business relations of any sort with the person whom the combination is seeking to coerce into a compliance with its demands.⁸ This is the so-called “secondary boycott” and the reasons for holding it unlawful⁹ are so strong that it is not probable that the doctrine of these cases will ever acquire any permanent foothold in the jurisprudence of this or any other country. There are also decisions in which it is said that members of a union acting in concert, have an absolute right to quit or threaten to quit their employment.¹⁰ If this were so, they might, without liability civil or criminal, adopt this course to procure the discharge or prevent the employment of workmen from purely malevolent motives, and without expectation of betterment for themselves; or (as has sometimes been done) to force their employer to pay a fine imposed on him by the union,¹¹ or to pay fines imposed on insubordinate members of the union in his employ,¹² or in furtherance of any other scheme of blackmailing or extortion.

⁵ See section 127.

⁶ See section 361.

⁷ See section 370.

⁸ See sections 76, 77.

⁹ See sections 84-90.

¹⁰ See section 35.

¹¹ See sections 45, 46.

¹² See section 47.

Within recent times much legislation relating to labor unions has been enacted. Some of it expressly legalizes labor unions, which is—so far as the law in the United States is concerned,—merely declaratory of the common law, and enumerates the objects for which combination is lawful; and in a majority of the states statutes have been enacted for the protection of unions in the use of their labels, a matter of the greatest economic importance to them. Statutes have also been enacted authorizing the incorporation of unions, for the arbitration of trade disputes, and for boards of conciliation to assist in the settlement thereof. Thus far the legislation is, no doubt, commendable, but in fostering and protecting labor unions, statutes have been enacted which are plainly in violation of organic law. Of this character are statutes which prohibit employers from discharging or threatening to discharge an employe for joining a union or for not withdrawing from a union to which he belongs, or from making it a condition of granting employment that the applicant shall refrain from joining a union, or that he shall withdraw from a union to which he belongs. This legislation is obviously unconstitutional on several grounds and it has been uniformly so held. In England also, legislation has been enacted,¹³ the provisions of which are in a high degree oppressive and unjust to those who are not members of trade unions. The effect of one of the sections of the act is to abrogate, so far as acts done in contemplation or furtherance of trade disputes are concerned, the doctrine laid down in the leading case of *Quin v Leatham*,¹⁴ and upheld by the weight of authority both in England and America that an act lawful for an individual may give rise to civil liability when committed by a combination of individuals. Another section of this statute abrogates the common law liability for inducing breaches of contract, if the acts inducing the breach are committed in contemplation or furtherance of a trade dispute, and the provisions of the section seem broad enough to include any means to induce the breach. “The general nature of the act” it has been said, “is in entire contradiction of those doctrines of personal freedom and equality before the law which have hitherto been its main object and aim.”¹⁵

¹³ Trade Disputes Act of 1906.

¹⁴ 1901 A. C. 495.

¹⁵ Farwell, J. in *Conway v Wade*, [1908] 2 K. B. 844, 855.

The writer desires to acknowledge his obligations to William Mack, editor-in-chief of *Cyc*, and John Lehman of the New York Bar, for valuable suggestions in respect of the classification and indexing of the topics considered, to Martin H. Manion of the New Orleans Bar, for a valuable form of pleading incorporated in the appendix of this work, and to B. F. Hill of New Orleans, for careful and efficient clerical assistance.

In the preparation of this work, all the American, English and Canadian cases have been used, and in order to round out and complete some of the chapters it has been found necessary to cite a considerable number of decisions which by reason of their close analogy to the subject under consideration might with propriety, be so cited. As already stated there is a great lack of harmony in the decisions relating to trade disputes, and much of the litigation arising therefrom is probably due to the unsettled state of the law. An attempt has been made in this work to ascertain, and apply the elementary principles of the law of torts and conspiracies on which a correct determination of questions arising out of this litigation must rest. It is, of course, axiomatic that no principle becomes established in the development of labor union law which does not operate equally upon both employer and employe, who stand upon a plane of perfect equality before the law, enjoying the same rights and amenable to the same restrictions.¹⁶ But the great difficulty, which confronts employer and employe alike, is to ascertain from the mass of conflicting decisions what these rights and restrictions are. In the fullest recognition of the equality and mutuality thereof, it has been said, "lies the peace of capital and labor, for so they, like nations with equally well drilled and equipped armies, will make and keep treaties of peace in the fear of the cost and consequences of war."¹⁷

¹⁶ As a concrete illustration of this principle the following may be given: A boycott of capital by labor being unlawful and criminal, by parity of reasoning, a boycott of labor by capital is equally under the ban of the law. Accordingly an injunction was awarded by Judge Fitzgerald of the Supreme Court of New York (*Walsh v Building Trades Employers' Assoc.*, *New York Law Journal*, March 29th, 1910), enjoining an association of employers from boycotting the members of a labor union. This case is cited here because decided too late to be incorporated in the text.

¹⁷ Judge Baker, in *Iron Moulders' Union v Allis-Chalmers Co.*, 166 Fed. at p. 52.

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CHAPTER I.

DEFINITION OR DESCRIPTION.

§ 1. The terms "labor union" and "trade union" are customarily used as meaning the same thing, but while all "labor unions" are "trade unions," the converse of this is not true. "Trade union" is a broader term than "labor union" in that it embraces combinations of employers as well as of laborers. This distinction, as will be presently shown, finds legislative recognition in the English Trade Union Act of 1871. The terms have been variously defined as follows:

Trade Unions: "An association of laborers for their mutual benefit."¹

"A combination of workmen of the same trade or of several allied trades for the purpose of securing by united action the most favorable conditions as regards wages, hours of labor, etc., for its members, every member contributing a stated sum, to be used primarily for the support of those members who seek to enforce their demands by striking and also as a benefit fund."²

"An organized association of workmen skilled in any trade or industrial occupation, formed for the protection and promotion of their common interests, especially to secure remunerative wages for their labor."³

"A combination among workmen for the purpose of maintaining their rights and privileges, with respect to wages, hours of labor and the like."⁴

"A combination for regulating the relations between workmen and masters, workmen and workmen, or masters and masters, or for imposing restrictive conditions on the conduct of any business."⁵

"Such combination temporary or permanent for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, as would if this act had not been passed, have been deemed to have

¹ English Law Dictionary.

⁴ The American Dictionary.

² Century Dictionary.

⁵ Encyc. Brit. xxiii, 499.

³ Standard Dictionary.

been an unlawful combination by reason of some one or more of its purposes being in restraint of trade.”⁶

Labor Unions: “A labor union frequently spoken of as a trade union is an association of workmen, usually but not necessarily employed in the same trade, for the purpose of combined action in securing the most favorable wages and conditions of labor.”⁷

“A union or society of workmen for the purpose of mutual support and encouragement; a trade union.”⁸

“Any union, association, federation, organization, by whatever name, of working men or women, or both, incorporated or unincorporated, whether such union, association, federation, or organization be international, national, interstate, state, or local, or whether comprising only one local union, association or organization or any number of local unions, associations or organizations.”⁹

Perhaps as good a definition or description of a labor union as any, is an association of workingmen of the same or of allied trades or occupations, the usual purposes of which are the regulation of their relations with their employers, the securing of better terms of employment, the elevation of their moral, social and intellectual condition, and the assistance financially or otherwise of members in time of sickness, poverty and distress.

⁶ Trade Union Act 1871, § 23, (34 & 35 Vict. c 31).

⁸ Century Dictionary.

⁷ *Labor Unions*, 24 Cyc. 816 (Citing Cyclopedic Law Dictionary).

⁹ Horner's Anno. Stat. Indiana, (1901) §6524k.

CHAPTER II.

THE RIGHT OF WORKINGMEN TO COMBINE AND THE PURPOSES FOR WHICH COMBINATION IS LAWFUL.

- § 2. Summary of Early English legislation relating to laborers.
- § 3. Early English decisions.
- § 4. Early American decisions.
- § 5. Modern doctrine respecting rights of workmen to combine—In England.
- § 6. In America—General rule.
- § 7. Rights as affected by statutes prohibiting pools and trusts.
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- § 9. The purposes for which combination is permissible—In general.
- § 10. To maintain or advance rate of wages.
- § 11. To obtain reduction of hours of employment.
- § 12. To secure careful and competent fellow-workmen.
- § 13. To accumulate strike fund, or fund for unemployed members.
- § 14. To provide fund for election and maintenance of member of legislative body.
- § 15. Limitations on the right of combination.

§ 2. Summary of early English legislation relating to laborers.

Before entering upon a discussion of early English decisions condemning combinations of workmen, a brief summary of the most important legislation relative to workmen in force during or before the period in which these decisions were handed down, will be given, as their influence in shaping the decisions must have been not inconsiderable. The Statute of "Labourers" passed in 1349, and 1350 (23 Edw. III, and 25 Edw. III, Stat. 1), said to be enacted to check the rise in wages, consequent upon the great pestilence known as the "Black Death," provided that every able-bodied person within the age of three score years, and not having means of his own, "if he in convenient service, (his estate considered) be required to serve, he shall be bounden to serve him which so shall require." In case of refusal to serve they were punishable by imprisonment, the rate of wage was fixed, and they were confined to their existing place of residence, and required to take oath to obey the statutes. In 1548, a Statute (2 and 3 Edw. VI, c. 15) was

passed forbidding under severe penalties all conspiracies of artificers, workmen or laborers, "not to make or do their work but at certain price or rate," or for other similar purposes. Fourteen years later, prior Statutes were amended and consolidated into a statute (5 Eliz. c. 4) which provided, in effect, that all persons able to work as laborers or artificers, and not possessed of independent means or other employments, are bound to work as artificers or laborers on demand. The hours of work are fixed; power is given to the justices in their next session after Easter to fix the wages to be paid to mechanics and laborers; elaborate rules are laid down as to apprenticeship; and it further provides that for the future no one is to "set up, occupy, use or exercise any craft, mystery or occupation now used" until he has served an apprenticeship of seven years.. In the year 1720 an act (7 Geo I Stat 1, c. 13) was passed declaring all agreements between journeymen tailors "for advancing their wages, or for lessening their usual hours of work" to be null and void, and subjecting persons entering into such an agreement to imprisonment, with or without hard labor, for two months. Similar enactments (12 Geo I, c. 34; 22 Geo II, c. 27) were passed as to employes in other manufactures and trades. The act of 1800 (40 Geo. III, c. 106) provides for a penalty of three months' imprisonment without hard labor, or two months with hard labor, for every journeyman, workman, or other person who "enters into any combination to obtain an advance of wages, or lessen or alter the hours of work * * * or who hinders any employer from employing any person as he thinks proper, or who being hired refuses without any just or reasonable cause to work with any other journeyman or workman employed or hired to work." And by 8 Geo. III, c. 17, the wages of journeymen tailors are to be regulated and settled at the Quarter Sessions in London.¹

A consideration of the abominable legislation here summarized, makes it obvious that the courts influenced thereby would inevitably treat combinations of laboring men with severity.

§ 3. Early English decisions.

The earliest English decision relating to labor combinations of which there is any mention, *The Tubwomen v Brewers of London*;

¹ See opinion of Chief Judge Parker in *National Protective Ass'n v Cumming*, 170 N. Y. 315, 63 N. E. 369, 88

Am. St. Rep. 648, 48 L. R. A. 135; and 4 *Jacob's Law Dictionary* 66.

and which has been frequently characterized as of doubtful authority,² is cited in the first reported decision in the year 1721, as holding that it is criminal conspiracy at common law for two or more persons to bind themselves together for the purpose of enforcing their demands for higher wages.³ Notwithstanding what may now be believed as to its authenticity, it was adopted as authority in *Rex v Journeymen Tailors*,⁴ which held that journeymen mechanics might be indicted at common law and convicted for conspiracy to raise their wages. It was held in this case that the indictment need not conclude *contra formam statuti*, because the gist of the offense was the conspiracy which was an offense at common law. But at the same time it appears that the object to be accomplished was the raising of wages above the rate fixed by act of parliament, or in other words the purpose of the combination was to violate a general statute law. In *Rex v Eccles*,⁵ a case decided in 1783, Lord Mansfield said that "every man may work at any price he pleases, but a combination not to work under certain prices is an indictable offense." In *Rex v Mawbey*,⁶ decided in 1796, it was said, that combinations of workmen to raise wages constituted an indictable conspiracy at common law. These are apparently all the reported decisions in which such combinations were held or said to be criminal conspiracies, prior to the enactment of legislation changing the law in this regard, although it is very probable that there were other decisions to the same effect which were not reported. That the common law doctrine was as stated in these de-

² In *The Master Stevedores' Ass'n v Walsh*, 2 Daly (N. Y.) 1, it is said (at page 6): "The volume of the 'Modern' reports, in which this reference is found, (to *The Tub Women v Brewers of London*) is one of the least reliable of the English reports, being full of inaccuracies, blunders and misstatements. Burrows, in his reports, speaks of it as a "miserable bad book," and says that upon being cited, the Court of King's Bench treated it with the contempt it deserved (1 Burr. 368): and by an excellent authority upon the books of reports and their reporters, it is characterized by the epithet of execrable

(Wallace's Common Law Reporter 3rd ed. p 226). The title "*The Tub Women v The Brewers of London*" is undoubtedly a mistake and it has been conjectured that the case referred to is *The King v Sterling and others* reported in 1 Lev. 125; 1 Sid. 274; 1 Keb. 350. See the conjectures of Mr. Emmett and of Mr. Sampson respecting it, in *Yates Select Cases* pp 164, 211, 212."

³ See *Rex v Journeymen Tailors*, 8 Mod. 10.

⁴ 8 Mod. 10.

⁵ 1 Leach C. C. 276.

⁶ 6 Term 619, 636.

cisions is evidenced by numerous precedents found in text books. In the works of an English writer of unquestionable authority, a precedent for an indictment at common law for conspiracy among workmen to raise wages and lessen the hours of labor is given in full,⁷ and in a footnote in this work reference is made to several other works containing similar precedents.⁸ While forms of indictments found in text-books are not as strong authority as adjudications of the courts, they are of some weight as showing what the law was, and taken in connection with the few decisions and dicta on the question must be deemed to show conclusively that it was an indictable offense at common law for workmen to conspire to raise their wages, especially where careful research shows no cases on the proposition to the contrary. The fact should not be overlooked, however, that these combinations were indictable at common law, because the thing conspired to be done was in violation of a general statute fixing the rate of wages for laborers and of a large branch of trade affecting the comfort and interest of the public. In a recent article in the *Cyclopedia of Law and Procedure* it is said, (and the proposition is supported by ample authority), that it is elementary law that a conspiracy to commit a crime, whether the grade be that of a felony or misdemeanor, is an indictable offense, *and that this is true whether the act agreed to be done is an offense at common law or is made so by statute.*⁹ It is essential to bear this principle in mind in determining what the common law rule as to combinations of workmen is in the United States, for unless the statutes mentioned were adopted as a part of the common law, any claim that the common law of a particular state makes it an indictable offense for workmen to combine to raise wages is altogether without foundation.

§ 4. Early American decisions.

It may be asserted with confidence that in no state of the Union

⁷ See Chitty's *Criminal Law* (5th Amer. Ed.) p 1163.

⁸ p 1183 citing 4 Went. 113, for a precedent of an indictment to diminish the time of working and compel the master to pay for a whole day's work; 4 Went. 375, indictment against journeymen lamplighters for conspiring to raise wages; 4 Went. 120, in-

dictment against carriers for endeavoring to raise their wages and to raise subscriptions for the support of those who joined them, 4 Went. 103, indictment against journeymen for conspiring to raise wages contrary to the order of the justices.

⁹ See *Conspiracy* 8 Cyc p 627 and cases cited.

with the exception of New York and Pennsylvania has any decision ever been rendered, which holds that a combination of workmen to raise wages is an unlawful or criminal conspiracy. The two earliest decisions in New York, *People v Melvin*, decided in 1810,¹⁰ and *People v Trequier*, decided in 1823,¹¹ have sometimes been cited as holding that a combination among workmen to raise wages is an indictable conspiracy, but they do not sustain this position. On the contrary in one of the cases, *People v Melvin*, the court expressly declared that it was not necessary to decide this question, and intimated that there was nothing unlawful in such a combination. But in another early New York decision, it was said to be an indictable conspiracy at common law for workmen to combine to raise their wages. At the time of that decision, however, the common law relating thereto defined and fixed by statute. The precise question involved in that case was whether a combination of workmen to raise wages, was within the purview of a statute making it an offense to commit any act injurious to trade or commerce, and it was held that it was. In support of this view it was said "It is important to the best interests of society that the price of labor be left to regulate itself, or rather be *limited* by the demand for it. Combinations or conspiracies to *enhance* or *reduce* the price of labor, or of any article of trade or commerce, are injurious. They may be oppressive, by compelling the public to give more for an article of necessity or convenience than it is worth: or on the other hand, of compelling the labor of the mechanic for less than its value. Without any officious or improper interference on the subject, the price of labor or the wages of the mechanic will be regulated by the demand for the manufactured article, and the value of that which is paid for it: but the right does not exist either to enhance the price of the article or the wages of the mechanic, by any forced and artificial means. The man who owns an article of trade or commerce is not obliged to sell it for any particular price, nor is the mechanic obliged by law to labor for any particular price. He may say that he will not make coarse boots for less than one dollar per pair, but *he has no right to say that no other mechanic shall make them for less*. The cloth merchant may say that he will not

¹⁰ 2 Wheeler's Crim. Cas. 202, 1
Yates Sel. Cas. 114.

¹¹ 1 Wheeler's Crim. Cas. 142.

sell his goods for less than so much per yard, but he has no right to say that no one else shall not sell for a less price. If one individual does not possess such a right over the conduct of another, no number of individuals can possess such a right. All combinations therefore to effect such an object are injurious not only to the individual particularly oppressed but to the public at large.”¹² So in a comparatively recent decision of the Supreme Court of Pennsylvania,¹³ it is said that “In Pennsylvania before any legislation on the subject, it was held that a combination of workmen to raise the price of labor, or of employers to depress it, was unlawful, because it was considered that such combination interfered with the price, which would otherwise be regulated by supply and demand.” And early Pennsylvania decisions, to which the writer of this treatise has not had access,¹⁴ have sometimes been cited as sustaining this position. Whatever any of these early decisions may have held is no longer of any importance in either of these states because of statutes enacted in both of them expressly legalizing combinations of workmen for the purpose of advancing wages, and for other purposes enumerated by statute.¹⁵

§ 5. Modern doctrine respecting right of workmen to combine— In England.

In 1825 all of the earlier English Statutes prohibiting combinations either of masters or of workmen for the purpose either of lowering or raising wages, or altering hours, or otherwise affecting their mutual relations were repealed. (6 Geo. IV, c. 129). The prohibition in this statute was confined to endeavors by force, threats, intimidation, molestation or obstruction to affect wages or hours, which acts were made illegal and punishable (Section 3), and it was further provided that neither master nor workmen should be punishable for any agreement in respect of wages or hours unless they infringed on the prohibitions in the third section (Section 4).¹⁶ Notwithstanding these statutes, these combinations were still, in the eye of the law, combinations in restraint of trade, and to that extent

¹² *People v Fisher*, 14 Wend. (N. Y.) 509, 28 Am. Dec. 501, note.

¹³ *Cote v Murphy*, 159 Pa. St. 419, 28 Atl. 190, 39 Am. St. Rep. 686, 23 L. R. A. 135.

¹⁴ *Journeyman Cordwainers of Pittsburgh*, Printed at Pittsburgh in 1811;

Philadelphia Journeymen Tailors' Case, Philadelphia 1827.

¹⁵ See the following section.

¹⁶ *Campbell C. J. in Hilton v Eckersley*, 6 El. & Bl. 47, 2 Jur. N. S. 587, 25 L. J. Q. B. 199, 4 W. R. 326.

at least unlawful associations,¹⁷ and one of the unpleasant consequences was that they might be plundered by their officers with impunity.¹⁸ In 1871, however, legislation, known as "The Trade Union Act of 1871," was enacted,¹⁹ the effect of which was to legalize labor unions, authorize their registration, and enable them to hold property.²⁰ Other legislation has also been enacted in recent years, the operation and effect of which will be considered in subsequent chapters.

§ 6. —In America— —General rule.

Whatever may have been the law in England in respect of combinations of workmen, before the enactment of the trade union act of 1871 and legislation subsequent thereto, it never obtained much foothold in America, and was expressly repudiated in a Massachusetts decision of a comparatively early date, in which a very exhaustive opinion was written by Chief Justice Shaw. He pointed out that while the leading English case held it a criminal conspiracy at common law for workmen to combine to raise wages, the purpose of the combination condemned was to violate a statute relating to wages of workmen, and said that all those rules of the parent country, whether rules of the common law, or early English statutes, which were made for the purpose of regulating the wages of laborers—not being adapted to the circumstances of our colonial conditions were not adopted, used or approved.²¹ "The early English statutes, beginning with the middle of the fourteenth century," it was said in another decision, "are to be read in the light of the civilization of that day and their provisions, to us of the nineteenth century, harsh, illiberal and tyrannical, were but the reflex of the

¹⁷ See Pennant's Trade Unions And The Law, Introduction p xl; Hilton v Eckersley, 6 El. & Bl. 47, 2 Jur. N. S. 587, 25 L. J. Q. B. 199, 4 W. R. 326, (decided in 1856); Hornby v Close, L. R. 2 Q. B. 153, 36 L. J. M. C. 43. (decided in 1867); Farrer v Close, L. R. 4 Q. B. 602, 38 L. J. M. C. 132 (decided in 1869).

¹⁸ See Rigby & Connell, 14 Ch. Div. 482, 49 L. J. Ch. 328, 48 L. T. 139.

¹⁹ 34 & 35 Vict. c. 31.

²⁰ Pennant's Trade Unions And The Law, Introduction p. xix, text pp. 72,

106, 108; and see opinion of Farwell L. J. in Conway v Wade, (1908) 2 K. B. 844, 853, 854, in which it was said: "The freedom of the individual workman was, until 1871, curtailed by the application of the doctrine of public policy, which treated combinations of workmen with the object of raising wages as conspiracies in restraint of trade, but the impediment was removed by the legislature in that year."

²¹ Com. v Hunt, 4 Met. (Mass.) 111, 38 Am. Dec. 346.

prevalent notions of class distinctions that shaped and guided the social and political polity of those days.”²² In some jurisdictions where there are statutes authorizing it, and in others, in the absence of statutory authorization, it is now well settled that workmen may combine and associate themselves together for the purpose of bettering their condition either financially or socially by legitimate and fair means.²³ Such a combination or association, it has

²² *State v Stewart*, 59 Vt. 273, 9 Atl. 559, 59 Am. Rep. 710. See also *Jetton-Dehkle Lumber Co., v Mather*, 53 Fla. 969, 43 So. 590, in which it was said: “The English law as to indictable conspiracy against workmen is so interwoven with harsh statutes passed in behalf of those in power, that are wholly inconsistent with our ideas of freedom of contract, of life, liberty, and the pursuit of happiness, as not to be applied in its rigor in this country.”

²³ *California*.—*Jordahl v Hayda*, 1 Cal. App. 696, 82 Pac. 1079.

District of Columbia.—*American Federation of Labor v Bucks’ Stove and Range Co.*, 37 Wash. Law Rep. 154.

Florida.—*Jetton-Dehlke Lumber Co. v Mather*, 53 Fla. 696, 43 So. 590.

Illinois.—*A. R. Barnes & Co. v Chicago Typo. Union*, 232 Ill. 424, 83 N. E. 940; 14 L. R. A. N. S. 1018; *Hey v Wilson*, 232 Ill. 389, 83 N. E. 928, 122 Am. St. Rep. 119, 16 L. R. A. N. S. 85; *Franklin Union v People*, 220 Ill. 355, 77 N. E. 176, 110 Am. St. Rep. 248, 4 L. R. A. N. S. 1001; *Adams v Brennan*, 177 Ill. 176, 52 N. E. 314, 69 Am. St. Rep. 222, 42 L. R. A. N. S. 718; *Beaton v Tarrant*, 102 Ill. App. 124.

Indiana.—*Karges Furniture Co. v Amalgamated Woodworkers’ Local Union*, 165 Ind. 421, 75 N. E. 877, 2 L. R. A. N. S. 788.

Iowa.—*Rohlf v Kasemeier*, 118 N. W. 276.

Maryland.—*Willner v Silverman*, 71 Atl. 962; *My Maryland Lodge v Adt.* 100 Md. 283, 59 Atl. 721, 68 L. R. 752.

Massachusetts.—*Pickett v Walsh*, 192 Mass. 572, 78 N. E. 753, 116 Am. St. Rep. 272, 6 L. R. A. N. S. 1067; *Snow v Wheeler*, 113 Mass. 179; *Carew v Rutherford*, 106 Mass. 1, 8 Am. St. Rep. 287; *Com. v Hunt*, 4 Met. 111, 129, 38 Am. Dec. 346.

Michigan.—*Brown v Stoerkel*, 74 Mich. 269, 41 N. W. 921, 3 L. R. A. 430.

Minnesota.—*Gray v Building Trades Council*, 91 Minn. 171, 97 N. W. 663, 103 Am. St. Rep. 477, 63 L. R. A. 753.

Missouri.—*Lohse Patent Door Co. v Fuelle*, 215 Mo. 421, 114 S. W. 997, 22 L. R. A. N. S. 607; *Chas. A. Olcott Planing Mill Co. v Fuelle*, 114 S. W. 1013.

New Jersey.—*Martin v McFall*, 65 N. J. Eq. 92, 55 Atl. 465.

New York.—*Jacobs v Cohen*, 183 N. Y. 207, 76 N. E. 5, 111 Am. St. Rep. 730, 2 L. R. A. N. S. 292; *National Protective Ass’n v Cumming*, 170 N. Y. 315, 63 N. E. 6, 58 L. R. A. 135, 88 Am. St. Rep. 648; *Curran v Galen*, 152 N. Y. 33, 46 N. E. 297, 37 L. R. A. 802, 57 Am. St. Rep. 493; *People v Marcus*, 97 N. Y. Suppl. 323, 110 App. Div. 255, (affirmed in 185 N. Y. 257, 77 N. E. 1073).

Ohio.—*Parker v Bricklayers’ Union No. 1*, 21 W. L. B. 223, 10 Ohio Dec. 458; *Moore v Bricklayers’ Union*, 23

been held, is not a monopoly, or in restraint of trade; personal service—an occupation, cannot be the subject of a monopoly.²⁴ The right of workmen to form unions is expressly conferred by statute in many jurisdictions,²⁵ and in a majority of the states the right is impliedly recognized by legislation enacted for the protection of unions from infringement of their labels,²⁶ for it is obvious that where statutes expressly create or recognize the right of labor unions to be protected in the use of labels for labor union purposes, any suggestion that the union is an unlawful association falls of itself.²⁷ It has also been held that the right to combine into unions has been raised to the dignity of a constitutional right by state constitutional provisions that all men are born free and equal and have certain natural, essential, and unalienable rights among which is the right of acquiring, possessing and protecting property.²⁸ But aside from any constitutional or statutory provision,

W. L. B. 48; 10 Ohio Dec. 665; *Hos-ter Brewing Co. v Giblin*, 14 Ohio Dec. N. P. 305; *Brunsmann v Atherton*, 12 Ohio Dec. N. P. 547; *Standard Tube & Forkside Co. v Internatl. Union of Bicycle Workers, etc.*, 9 Ohio Dec. 55.

Oregon.—*Longshore Printing & Publishing Co. v Howell*, 26 Ore. 526, 38 Pac. 547, 46 Am. St. Rep. 640, 28 L. R. A. 464.

Pennsylvania.—*Purvis v United Brotherhood of Carpenters and Joiners*, 214 Pa. St. 328, 63 Atl. 585, 112 Am. St. Rep. 757, 12 L. R. A. N. S. 642; *McVey v Brendel*, 144 Pa. St. 235, 22 Atl. 912, 27 Am. St. Rep. 625, 13 L. R. A. 377.

Vermont.—*State v Stewart*, 59 Vt. 273, 9 Atl. 559, 59 Am. Rep. 710.

Virginia.—*Everett Wadley Co. v Richmond Typographical Union*, 105 Va. 188, 53 S. E. 273, 5 L. R. A. N. S. 792.

Wisconsin.—*State v Krentzberg*, 114 Wis. 530, 90 N. W. 1098, 91 Am. St. Rep. 934, 58 L. R. A. 748.

United States.—*Adair v United States*, 208 U. S. 161, 28 Sup. Ct. 277; *Hitchman Coal Co. v Mitchell*, 172

Fed. 963; *National Telephone Co. v Kent*, 156 Fed. 173; *Allis-Chalmers Co. v Iron Moulders' Union*, 150 Fed. 155; *United States v Moore*, 129 Fed. 630; *Wabash R. Co. v Hannahan*, 121 Fed. 563; *Union Pac. R. Co. v Ruef*, 120 Fed. 102; *Allis-Chalmers Co. v Reliable Lodge*, 111 Fed. 264; *Hopkins v Oxley Stave Co.*, 83 Fed. 912, 28 C. C. A. 99; *In Re Charge to Grand Jury*, 62 Fed. 828; *Thomas v Cin. etc. R. Co.*, 62 Fed. 803; 4 *Inters. Com. Rep.* 788; *In Re Charge to Grand Jury*, 62 Fed. 840; *Ames v Union Pac. R. Co.*, 62 Fed. 714; *Lake Erie, etc. R. Co. v. Bailey*, 61 Fed. 494; *In Re Higgins*, 27 Fed. 443.

²⁴ *Lohse Patent Door Co. v Fuelle*, 215 Mo. 421, 114 S. W. 997, 22 L. R. A. N. S. 607.

²⁵ See statutes of various states.

²⁶ See *infra* chapter xxvii, *Union Labels*.

²⁷ *Tracy v Banker*, 170 Mass. 266, 49 N. E. 308, 39 L. R. A. 508.

²⁸ *Pickett v Walsh*, 192 Mass. 572, 78 N. E. 753, 116 Am. St. Rep. 272, 6 L. R. A. N. S. 106.

the better view is that the right of laborers to organize into unions is an exercise of the common law right of every citizen to pursue his calling whether of labor or business as he in his judgment thinks fit,²⁹ and the law not only permits but encourages combinations of this character.³⁰ An underlying law of human society, it is said, moves men to unite for the better achievement of a common aim and this social principle justifies organized action. Organization or combination is a law of human society. It is open to all orders of men who desire to accomplish some lawful purpose through the greater strength and effectiveness which organization offers over individual effort.³¹⁻³² A very strong reason for permitting labor combinations is this. In an age when vast combinations of capital are common and the number of individual employers of labor, and in consequence, competition for labor by employers enormously reduced, combination on the part of labor is an absolute necessity if the wage earner is to obtain his fair share in the distribution of the earnings which are the joint product of capital and labor.³³ Combination on the part of capital is powerful. Combination on the part of labor is the necessary and desirable counterpart if the battle is to be carried on in a fair and equal way.³⁴ The natural tendency of combined

²⁹ *Pickett v Walsh*, 192 Mass. 572, 78 N. E. 753, 116 Am. St. Rep. 272, 6 L. R. A. N. S. 1067; and see *United States v Moore*, 129 Fed. 630; *Southern R. Co. v Machinists' Local Union*, 111 Fed. 49, 55.

³⁰ *Connecticut*.—*State v Glidden*, 55 Conn. 46, 8 Atl. 890, 3 Am. St. Rep. 231.

Massachusetts.—*Vegelahn v Guntner*, 167 Mass. 92, 44 N. E. 1077, 57 Am. St. Rep. 443, 55 L. R. A. 72.

Missouri.—*Lohse Patent Door Co. v. Fuelle*, 215 Mo. 421, 114 S. W. 97, 22 L. R. A. N. S. 607.

New Jersey.—*Barr v Essex Trades Council*, 53 N. J. Eq. 101, 30 Atl. 881.

Ohio.—*Cigar Makers' Union v Lindner*, 3 Ohio Dec. 244.

Pennsylvania.—*McVey v Brendel*, 144 Pa. St. 235, 22 Atl. 912, 27 Am. St. 625, 13 L. R. A. 377.

United States.—*Adair v United States*, 208 U. S. 161, 28 Sup. Ct. Rep. 277; *Arthur v Oakes*, 63 Fed. 310, 324, 325, 11 C. C. A. 209, 25 L. R. A. 414, 4 Inters. Com. Rep. 744; *Thomas v Cincinnati, etc. R. Co.*, 62 Fed. 803, 4 Inters. Com. Rep. 788.

³¹⁻³² *Jacobs v Cohen*, 183 N. Y. 207, 212, 76 N. E. 5, 111 Am. St. Rep. 730, 2 L. R. A. N. S. 292.

³³ See generally *Vegelahn v Guntner*, 167 Mass. 92, 44 N. E. 1077, 57 Am. St. Rep. 443, 55 L. R. A. 722; *Opinion of Holmes, J. in Plant v Woods*, 176 Mass. 492, 57 N. E. 1011, 79 Am. St. Rep. 330, 51 L. R. A. 339; *Johnston Harvester Co. v Meinhardt*, 60 How. Pr. (N. Y.) 168.

³⁴ *Holmes, J. in Vegelahn v Guntner*, 167 Mass. 92, 44 N. E. 1077, 57 Am. St. Rep. 443, 55 L. R. A. 722. And see opinion of *Von Osdel J. in Amer-*

capital is to seek to obtain the cheapest labor; and unless resisted by combination on the part of the wage earner it would inevitably result in oppression and injustice. As was said by Attorney General Olney: "Today, the mass of wage earners can no longer be dealt with by capital as so many isolated units. The time is passed when the individual workman is called upon to pit his feeble strength against the might of organized capital."³⁵

§ 7. — Right as affected by statutes prohibiting pools and trusts.

The right to combine considered in the preceding section is in no way affected by a statute forbidding a combination, agreement or understanding to regulate or fix the price of any article of merchandise, or commodity, or of merchandise to be manufactured, mined or produced, or sold in a state, and declaring that parties to such combination, agreement, or understanding shall be guilty of conspiracy. The statute is aimed at unlawful conspiracies or combinations in restraint of trade and has no application to labor unions, and combinations to fix the price of labor.³⁶

§ 8. — Right as affected by fact that workmen are employes in employ of receiver.

So it has been held that employes of receivers have the same right as other workmen to organize into or form a labor union.³⁷

§ 9. The purposes for which combination is permissible—In general.

Broadly speaking workmen may combine to obtain any legitimate advantage.³⁸ They may combine for the purpose of raising their

ican Federation of Labor v Bucks' Stove and Range Co. (D. C. App.) 37 Wash. Law Rep. 154.

³⁵ Atty. Gen. Olney as amicus curiae in Platt v R. Co., 65 Fed. 660, quoted in 83 Fed. 933.

³⁶ Rohlf v Kasemeier, (Iowa), 118 N. W. 276 (distinguishing Loewe v Lawlor, 208 U. S. 274, 52 L. ed. 488, 28 Sup. Ct. 301). And see National Fireproofing Co. v Mason Builders' Ass'n., 169 Fed. 259.

³⁷ United States v Weber, 114 Fed.

950; Arthur v Oakes, 63 Fed. 310, 321, 11 C. C. A. 209, 25 L. R. A. 414, 4 Inters. Com. Rep. 744; Thomas v Cincinnati, etc. R. Co., 62 Fed. 803, 4 Inters. Com. Rep. 788; In Re Doolittle, 23 Fed. 544; United States v Kane, 23 Fed. 748.

³⁸ State v Stockford, 77 Conn. 227, 58 Atl. 769, 107 Am. St. Rep. 28; Karges Furniture Co. v Amalgamated Woodworkers' Local Union, 165 Ind. 421, 75 N. E. 877, 2 L. R. A. N. S. 788.

intellectual, moral and social condition,³⁹ for social enjoyment,⁴⁰ to afford members assistance in times of poverty, sickness, and distress,⁴¹ for the advancement and development of the intelligence of the members, and in consequence their skill in their trade or calling,⁴² to redress grievances of members,⁴³ to improve or regulate their relations with their employers,⁴⁴ to secure employment for their members,⁴⁵ and, according to some decisions, to secure the employment of members in preference to and to the exclusion of other workmen,⁴⁶ or to secure control of the work connected with their trade,⁴⁷ although as will be subsequently shown, there is authority which denies the correctness of these last two propositions.⁴⁸

§ 10. —To maintain or advance the rate of wages.

So one of the foremost purposes of organization among workmen is to secure the best wages obtainable, and whatever views may have been formerly entertained on the subject, it is no longer open to question that a combination of workmen formed for the purpose

³⁹ *Com. v Hunt*, 4 Met. (Mass.) 111, 129, 38 Am. Dec. 346; *Coeur D. Alene Consol. & Min. Co. v Miners' Union of Wardner*, 51 Fed. 260, 19 L. R. A. 382.

⁴⁰ *Coeur D. Alene Consol. & Min. Co. v Miners' Union of Wardner*, 51 Fed. 260, 19 L. R. A. 382.

⁴¹ *Com. v Hunt*, 4 Met. (Mass.) 111, 129, 38 Am. Dec. 346; *Parker v Bricklayers' Union No. 1*, 21 W. L. B. 223, 10 Ohio Dec. 458.

⁴² *Com. v Hunt*, 4 Met. (Mass.) 111, 129, 38 Am. Dec. 346; *Parker v Bricklayers' Union No. 1*, 21 W. L. B. 223, 10 Ohio Dec. 458; *Cigar Makers' Union v Lindner*, 3 Ohio Dec. 244.

⁴³ *Jacobs v Cohen*, 183 N. Y. 212, 76 N. E. 5, 111 Am. St. Rep. 730, 2 L. R. A. N. S. 292.

⁴⁴ *Jacobs v Cohen*, 183 N. Y. 212; 76 N. E. 5, 111 Am. St. Rep. 730, 2 L. R. A. N. S. 292; *Nat'l Protective Ass'n v Cumming*, 170 N. Y. 315, 63 N. E. 369, 88 Am. St. Rep. 648, 58 L. R. A. 135.

⁴⁵ *Hey v Wilson*, 232 Ill. 389, 83 N. E. 928, 122 Am. St. Rep. 119, 16 L. R. A. N. S. 85; *Pickett v Walsh*, 192 Mass. 572, 78 N. E. 753, 116 Am. St. Rep. 272, 6 L. R. A. N. S. 1067; *Nat'l Protective Ass'n v Cumming*, 170 N. Y. 315, 63 N. E. 369, 88 Am. St. Rep. 648, 58 L. R. A. 135; *Curran v Galen*, 152 N. Y. 33, 46 N. E. 297, 57 Am. St. Rep. 496, 37 L. R. A. 802; *Mills v United States Printing Co.*, 99 N. Y. App. Div. 605, 91 N. Y. Suppl. 185; *Davis v United Portable Hoisting Engineers*, 28 App. Div. 396, 15 N. Y. Suppl. 180; *Tallman v Galilard*, 57 N. Y. Suppl. 419, 27 Misc. 114; *Parker v Bricklayers' Union No. 1*, 21 W. L. B. 223, 10 Ohio Dec. 458.

⁴⁶ *National Protective Ass'n v Cumming*, 170 N. Y. 315, 63 N. E. 369, 88 Am. St. Rep. 648, 58 L. R. A. 135.

⁴⁷ *Mayer v Journeymen Stonecutters' Ass'n*, 47 N. J. Eq. 519, 20 Atl. 492; *National Fireproofing Co. v Mason Builders' Ass'n*, 145 Fed. 260.

⁴⁸ See *Infra*, chapter iv, *Strikes*, Section 38.

of maintaining or advancing the rate of wages is a perfectly legitimate one.⁴⁹ They are entitled to the highest wages and the best conditions that they can command.⁵⁰ They may fix the price of labor and refuse to work unless it is obtained,⁵¹ and they have that right both as individuals and in combination.⁵² It is of benefit to them and to the public that laborers should unite in common inter-

Connecticut.—State v Glidden, 55 Conn. 46, 8 Atl. 890, 3 Am. St. Rep. 23; State v Stockford, 77 Conn. 227, 58 Atl. 769, 107 Am. St. Rep. 28.

Indiana.—Karges Furniture Co. v Amalgamated Woodworkers' Local Union, 165 Ind. 421, 75 N. E. 877, 2 L. R. A. N. S. 788.

Iowa.—Rohlf v Kasemeier, 118 N. W. 277.

Maryland.—My Maryland Lodge v Adt. 100 Md. 283, 59 Atl. 721, 68 L. R. A. 752.

Massachusetts.—Corew v Rutherford, 106 Mass. 1, 28 Am. Rep. 287.

Michigan.—Beck v Railway Teamsters' Protective Union, 118 Mich. 497, 77 N. W. 13, 74 Am. St. Rep. 421, 42 L. R. A. 407.

Minnesota.—Gray v Building Trades Council, 91 Minn. 171, 97 N. W. 663, 103 Am. St. Rep. 477, 63 L. R. A. 753.

Missouri.—Lohse Patent Door Co. v Fuelle, 215 Mo. 421, 114 S. W. 997, 22 L. R. A. N. S. 607.

New York.—Jacobs v Cohen, 183 N. Y. 342, 76 N. E. 5, 111 Am. St. Rep. 730, 2 L. R. A. N. S. 292; Nat'l Protective Ass'n v Cumming, 170 N. Y. 315, 63 N. E. 6, 88 Am. St. Rep. 648, 58 L. R. A. 135; Curran v Galen, 152 N. Y. 33, 46 N. E. 297, 57 Am. St. Rep. 496, 37 L. R. A. 802; New York Cent. Iron Co. v Brennan, 105 N. Y. Suppl. 865; Rogers v Evarts, 17 N. Y. Suppl. 264; Master Stevedores' Ass'n v Walsh, 2 Daly 1; Johnston Harvester Co. v Meinhardt, 60 How. Pr. 168.

Ohio.—Perkins v Rogg, 11 Ohio Dec. (Reprint) 585; Moores v Bricklayers' Union, 23 W. L. B. 48, 10 Ohio Dec. (Reprint) 665; Dayton Mfg. Co. v Metal Polishers' Union, 11 Ohio Dec. 642.

Oregon.—Longshore Printing & Pub. Co. v Howell, 26 Ore. 527, 38 Pac. 547, 46 Am. St. 640, 28 L. R. A. 464.

Pennsylvania.—Cook v Dolan, 19 Pa. Co. Ct. 401; McCandless v O'Brien, 38 Pa. L. J. 435, 8 Lane. 254.

Virginia.—Everett Waddey Co. v Richmond Typo. Union, 105 Va. 188, 53 S. E. 273, 5 L. R. A. N. S. 792.

United States.—Adair v U. S., 208 U. S. 161, 28 Sup. Ct. 277; Wabash R. Co. v Hannahan, 121 Fed. 563; United States v Cassidy, 67 Fed. 727; Thomas v Cincinnati etc. R. Co., 62 Fed. 817; 4 Inters. Com. Rep. 788.

England.—Lyons v Wilkins, L. R. 1 Ch. (1896) 811; Reg. v Rowlands, 5 Cox Crim. Cas. 436; Reg. v Duffield, 5 Cox Crim. Cas. 404.

⁴⁹ United States v Cassidy, 67 Fed. 727.

⁵¹ My Maryland Lodge v Adt., 100 Md. 238, 59 Atl. 721, 68 L. R. A. 252; Beck v Railway Teamsters' Protective Union, 118 Mich. 497, 77 N. W. 13, 74 Am. St. Rep. 421, 42 L. R. A. 407; Longshore Printing & Publishing Co. v Howell, 26 Ore. 527, 38 Pac. 547, 46 Am. St. 640, 28 L. R. A. 464.

⁵² My Maryland Lodge v Adt., 100 Md. 238, 59 Atl. 721, 68 L. R. A. 252; Wabash R. Co. v Hannahan, 121 Fed. 568.

est and for lawful purposes. They have labor to sell. If they stand together they are often able, all of them, to command better prices for their labor than when dealing singly with rich employers because the necessities of the single employe may compel him to accept any terms offered to him.⁵³ It has been well said that if it is lawful for the stockholders and officers of a corporation to associate together for the purpose of reducing the wages of its employes or of devising other means for making their investment profitable it is equally lawful for organized labor to associate, consult and confer with a view to maintain or increase wages.⁵⁴

§. 11. —To obtain reduction of hours of employment.

So workmen may lawfully combine to obtain a reduction of the hours of employment,⁵⁵ for the same reason that authorizes a combination to advance or maintain the rate of wages. A demand that wages should be paid during working hours amounts merely to a demand for a shorter day and the attainment thereof is a legitimate object of a combination.⁵⁶

§ 12. —To secure careful and competent fellow-workmen.

The securing of careful and competent fellow-servants in order to diminish the risk incident to employment is a legitimate object of a combination among laboring men. The reason for this is obvious. In the event of injury by the negligence of a fellow-servant, except where the rule is changed by statute, the burden would have to be borne by the injured servant without compensa-

⁵³ *Thomas v Cincinnati etc. R. Co.*, 62 Fed. 803, 4 Inters. Com. Rep. 788.

⁵⁴ *Caldwell J. in Ames v Union Pac. R. Co.*, 62 Fed. 7, 14.

⁵⁵ *Connecticut*.—*State v Stockford*, 77 Conn. 227, 58 Atl. 769, 107 Am. St. Rep. 128.

Indiana.—*Karges Furniture Co. v Amalgamated Woodworkers' Local Union*, 165 Ind. 421, 75 N. E. 877, 2 L. R. A. N. S. 788.

Massachusetts.—*L. D. Wilcutt & Sons Co. v Driscoll*, 200 Mass. 110, 85 N. E. 897.

Missouri.—*Lohse Patent Door Co. v Fuelle*, 215 Mo. 421, 114 S. W. 997, 22 L. R. A. N. S., 607.

New York.—*Jacobs v Cohen*, 183 N. Y. 212, 76 N. E. 5, 111 Am. St. Rep. 730, 2 L. R. A. N. S. 292; *Nat'l Protective Ass'n v Cumming*, 170 N. Y. 315, 63 N. E. 369, 88 Am. St. Rep. 648, 58 L. R. A. 135; *People v Marcus*, 97 N. Y. Suppl. 323.

Pennsylvania.—*Cote v Murphy*, 159 Pa. St. 419, 425, 28 Atl. 190, 39 Am. St. Rep. 686, 23 L. R. A. 135.

⁵⁶ *L. D. Wilcutt & Sons Co. v Driscoll*, 200 Mass. 110, 85 N. E. 897.

tion by the master, and with no financial responsibility as a general rule on the part of those causing the injury.⁵⁷

§ 13. —**To accumulate strike fund, or fund for unemployed members.**

The accumulation of a strike fund for the support of those who feel that the wages offered are below market prices is one of the legitimate objects of a labor organization,⁵⁸ as is also the accumulation of a fund for the unemployed members of the association.⁵⁹

§ 14. —**To provide fund for election and maintenance of member of legislative body.**

A "trade union" as defined by the English statutes,⁶⁰ cannot have lawfully as one of its objects the provision of funds by compulsory levy on its members for the election and maintenance of representatives in legislative bodies. And it is *ultra vires* to make rules for the collection of funds in such manner and for such purpose.⁶¹ Furthermore, where under the rules the object of the fund is to procure members of legislative bodies who shall contractually bind themselves to vote in a prescribed manner, there is a still stronger objection to the legality of the rules. They are against public policy. The reason is that the position of a representative is that of a man who has accepted a trust towards the public, and that any contract, whether for valuable consideration or otherwise, which binds him to exercise that trust in any other way than as on each occasion he conscientiously feels to be best in the public interest is illegal and void. This deep-seated principle of law is the basis

⁵⁷ *Clemmit v Watson*, 14 Ind. App. 38, 42 N. E. 367; *National Protective Ass'n v Cumming*, 170 N. Y. 315, 63 N. E. 369, 88 Am. St. Rep. 648, 58 L. R. A. 135.

⁵⁸ *Thomas v Cincinnati etc. R. Co.*, 62 Fed. 803, 817, 4 Inters. Com. Rep. 788.

⁵⁹ See *Hitchman Coal Co. v Mitchell*, 172 Fed. 963.

⁶⁰ Trade Union Act 1876, § 3, defines a trade union as "any combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between

masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, whether such combination would or would not, if the principal act had not been passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade."

⁶¹ *Osborne v Amalgamated Railway Servants*, L. R. (1909) 1 Ch. 163 (reversing 24 T. L. R. 827, and overruling *Steele v South Wales Miners' Federation* (1907) 1 K. B. 361, 76 L. J. K. B. 333, 96 L. T. 260, 23 T. L. R. 228).

of the illegality at common law of bribery at parliamentary elections, for the power of voting for a representative is also a trust towards the public.⁶² The rules are also against public policy because they compel the members to allow their funds to be applied, and themselves to subscribe thereto, for the purpose of election and maintenance of representatives. "Such compulsion is utterly opposed to representative government." * * * Freedom of choice is the very corner stone of representative government, the withdrawal of which would destroy the whole fabric. It is the justification by which legislative interference with the individual freedom of free men in a free country is reconciled with such freedom, namely, that the interference is their own act, because the Act is passed by the representatives of the whole body of free and independent electors freely chosen. Any compulsion, whether physical, spiritual or temporal, which makes a man subscribe to support a representative against his will and judgment is as inconsistent with those principles as is similar compulsion to vote, and, indeed, may in these days when voters are so numerous, be of even more pernicious effect because more far-reaching. It is not enough to say that a man's vote has not been influenced. It is also necessary for his freedom that he shall not have been coerced into supporting by money or otherwise the candidate whom he wishes to oppose."⁶³

§ 15. Limitations on the right of combination.

The limitation on the right of workmen to combine for their own benefit and protection, is that in the exercise of this right the property and rights of others must be respected.⁶⁴ A labor union being an organization brought about by the exercise on the part of its members of the right of every citizen to pursue his calling as he thinks best is limited in what it can do by the existence of the same right in each and every other citizen to pursue his or their calling as he or they may think best.⁶⁵ Workmen who have combined into a union cannot have under the law of equal rights, a liberty of contracting as they please, working when they please, and quitting

⁶² Opinion of Fletcher Moulton L. J. at pp. 186, 187.

⁶³ Opinion of Farwell L. J. at pp. 194, 195.

⁶⁴ *United States v Cassidy*, 67 Fed. 721.

⁶⁵ *Pickett v Walsh*, 192 Mass. 572,

78 N. E. 753, 116 Am. St. Rep. 272, 6 L. R. A. N. S. 1067; *Brunsmann v Atherton*, 12 Ohio Dec. N. P. 547; *Marietta Casting Co. v Thuma*, 28 Pa. Co. Ct. 238; *Goldfield Consolidated Mines Co. v Goldfield Miners' Union*, 159 Fed. 500.

when they please, which does not belong alike to non-union men and employers of labor.⁶⁶ It was said by an early commentator on the law of Trade Unions that "every person has a right under the law, as between him and his fellow subjects, to full freedom in disposing of his own labor or his own capital according to his own will. It follows that every other person is subject to the correlative duty arising therefrom, and is prohibited from any obstruction to the fullest exercise of this right which can be made compatible with the exercise of similar rights by others."⁶⁷ The law sanctions no combinations either of employers or employes which have for their immediate purpose the injury of another,⁶⁸ or the unjustifiable interference with his rights and privileges.⁶⁹ It is the absolute, unqualified right of every employe, as well as of every other person, to go about his business unmolested and unobstructed, and free from intimidation, force or duress.⁷⁰

⁶⁶ *Southern R. Co. v Machinists' Local Union*, 111 Fed. 48.

⁶⁷ Erle on Trade Unions, p. 12. And see *Parker v Stablenens' Union*, (Cal.) 103 Pac. 334; *Plant v Woods*, 176 Mass. 492, 498, 57 N. E. 1011, 51 L. R. A. 339, 79 Am. St. Rep. 330; *Pickett v Walsh*, 192 Mass. 572, 78 N. E. 753, 116 Am. St. Rep. 272, 6 L. R. A. N. S. 1067; *State v Stewart*, 59 Vt. 273, 9 Atl. 559, 59 Am. Rep. 710.

⁶⁸ *A. R. Barnes & Co. v Chicago Ty-*

pographical Union, 232 Ill. 424, 83 N. E. 940, 14 L. R. A. N. S. 1018; *Curran v Galen*, 152 N. Y. 33, 46 N. E. 297, 57 Am. St. Rep. 496, 37 L. R. A. 802; *W. P. Davis Mach. Co. v Robinson*, 84 N. Y. Suppl. 837, 41 Misc. 329.

⁶⁹ *Lucke v Clothing Cutters' & Trimmers' Assembly*, 77 Md. 396, 26 Atl. 505, 39 Am. St. Rep. 421, 19 L. R. A. 408.

⁷⁰ *Parker v Stablenens' Union*, (Cal.) 103 Pac. 324.

CHAPTER III.

THE MEANS BY WHICH THE PURPOSES OF THE COMBINATION MAY BE RENDERED EFFECTIVE.

§ 16. Scope of chapter.

§ 17. Lawful means.

§ 18. Procuring others to join union—Introductory statement.

§ 19. By peaceable argument and persuasion.

§ 20. By coercion and intimidation.

§ 21. Refusal to teach trade to others.

§ 22. Presentation of cause to public.

§ 23. Publication of newspapers.

§ 24. Agreeing to support employers of union men in trade or otherwise.

§ 16. Scope of chapter.

At the outset, it is proper to state that the subject under consideration is one of such magnitude that any treatment thereof within the compass of a single chapter is impossible. Only matter which is of the most general nature, or which is not susceptible of classification elsewhere will be here considered. The great bulk of the matter on the subject will be found in the subsequent chapters on "Strikes," "Acts in Furtherance of Strikes," "Boycotts," "Exercise by Union of Disciplinary Measures Against Its Members as Affecting Rights of Third Parties," "Picketing," "Liability to Workmen for Preventing Them from Working by Force, or Intimidation Directed Against Them," "Contracts Providing for Employment of Union Men Only," "Procuring Breach of Contract," "Restraint or Obstruction of Interstate Commerce," "Obstructing and Retarding Mails."

§ 17. Lawful means.

While labor unions may use all lawful means to carry into effect the objects of their organizations,¹ only lawful and peaceable means may be employed,² no matter how laudable the ultimate object

¹ *Jordahl v Hayda*, 1 Cal. App. 696, 82 Pac. 1079; *State v Glidden*, 55 Conn. 46, 8 Atl. 890, 3 Am. St. Rep. 23; *Cook v Dolan*, 19 Pa. Co. Ct. 401, 6 Pa. Dist. Rep. 524.

² *Hey v Wilson*, 232 Ill. 389, 83 N. E. 928, 122 Am. St. Rep. 119, 16 L. R. A. N. S. 85; *Willner v Silverman*, (Md.), 71 Atl. 962.

sought to be effected may be.³ The doctrine that the end sanctifies the means has no place in a condition of society where law prevails. Even a good purpose must abide its time and follow the path marked out by law, rather than hasten its accomplishment by ignoring the equal rights of others. A patient recognition of these safeguards which the law has thrown about every lawful possession, and of those limitations and restraints within which every lawful endeavor must be advanced, is the only sure way of helping on any worthy cause.⁴

§ 18. Procuring others to join union—Introductory statement.

The old adage that in union there is strength is nowhere more strikingly illustrated than in the case of labor organizations. The greater the number of their members, the greater their power to enforce their demands in the ever increasing contests between labor and organized capital. The strengthening of labor unions by the addition of new members is of the first importance and they have the right to use all lawful means to that end.

§ 19. —By peaceable argument and persuasion.

Thus members of a labor union in order to strengthen their union may use peaceable persuasion and argument to induce other workmen to join their organization.⁵ unless this will constitute a violation of a contract by such workmen with their employers,⁶ and the

³ *L. D. Willeutt & Sons Co. v Driscoll*, 200 Mass. 110, 85 N. E. 897.

⁴ *Purvis v United Brotherhood of Carpenters & Joiners*, 214 Pa. St. 344, 63 Atl. 585, 112 Am. St. Rep. 751, 12 L. R. A. N. S. 642.

⁵ *Indiana*.—*Karges Furniture Co. v Amalgamated Woodworkers' Local Union*, 165 Ind. 421, 75 N. E. 877, 2 L. R. A. N. S. 788.

Michigan.—*Beck v Railway Teamsters' Union*, 118 Mich. 497, 77 N. W. 13, 74 Am. St. Rep. 421, 42 L. R. A. 407.

Maryland.—*My Maryland Lodge v Adt*, 100 Md. 283, 59 Atl. 721, 68 L. R. A. 752.

Massachusetts.—*Com. v Hunt*, 4 Met. 111, 38 Am. Dec. 346.

New York.—*Zieger v Nolan*, 1 N. Y. City Ct. Supp. 54, holding that a member of a union has a right to accost workmen in the street or elsewhere and invite them to join.

Ohio.—*Parker v Bricklayers' Union No. 1*, 10 Ohio Dec. (Reprint) 458; *Brown Mfg. Co. v Local Union No. 76*, 12 Ohio Dec. N. P. 753; *Dayton Mfg. Co. v Metal Polishers' Union*, 11 Ohio Dec. 643.

United States.—*Hitchman Coal Co. v Mitchell*, 172 Fed. 963; *United States v Weber*, 114 Fed. 950.

England.—*Reg v Druitt*, 10 Cox Cr. Cas. 592, 16 L. T. 855.

⁶ *Flaccus v Smith*, 199 Pa. St. 128, 48 Atl. 894, 85 Am. St. Rep. 779, 54 L. R. A. 640.

fact that those whom it is sought to persuade are employes of a receiver in no way affects this right.⁷ The right to combine involves of necessity the right to persuade all co-laborers to join in the combination.⁸ Members of labor organizations have the undoubted right to promulgate their theories by reason, logic, argument, and the persuasive influence of those peaceful weapons to the end that other men may think as they do. When that persuasion has been accomplished, the men persuaded may evidence such fact by joining the organization in whose principles and theories they have come to believe.⁹

§ 20. —By coercion and intimidation.

The better opinion is that no coercion or intimidation can be resorted to in order to compel workmen to join a labor union,¹⁰ and that all combinations formed for that purpose are unlawful.¹¹ While unions have the right to make such lawful rules as they please for the regulation of their own conduct, they have no right to force other persons to join them.¹²

§ 21. —Refusal to teach trade to others.

Members of a union may for the furtherance of their interests make reasonable regulations as to how and whom they will instruct in the skill of their trade.¹³ They may lawfully agree not to give instruction to others in their trade unless with the consent of the union, and may refuse to give instruction to those who are not registered therein.¹⁴

§ 22. Presentation of cause to public.

As a means of effecting the purposes of the organization the members have an unquestionable right to present their cause to the

⁷ United States v Weber, 114 Fed. 950.

⁸ Rogers v Evarts, 17 N. Y. Suppl. 264.

⁹ Otis Steel Co. v Local Union No. 218, 110 Fed. 698.

¹⁰ Longshore Printing & Publishing Co. v Howell, 26 Ore. 527, 38 Pac. 547, 46 Am. St. Rep. 640, 28 L. R. A. 464. Brompton J. in Quin v Leathem, (1901) A. C. 495, 526, 70 L. J. P. C. 76, 85 L. T. 289. See also *Infra*, Chapters iv, *Strikes*, Sections

39, 40, 41; xxv, *Membership*, Section 301.

¹¹ Old Dominion Steamship Co. v McKenna, 30 Fed. 48.

¹² Plant v Woods, 176 Mass. 492, 57 N. E. 1011, 79 Am. St. Rep. 330, 51 L. R. A. 339.

¹³ Parker v Bricklayers' Union No. 1, 21 W. L. B. 223, 10 Ohio Dec. 458.

¹⁴ Snow v Wheeler, 113 Mass. 179.

¹⁵ Parker v Bricklayers' Union No. 1, 21 W. L. B. 223, 10 Ohio Dec. 458.

public in newspapers or circulars or otherwise in a peaceable way and without any attempt at coercion.¹⁶ They may go among their friends and others and state their grievances and by logic, persuasion and argument induce others to stand with them against what they claim is unfair and unjust.¹⁷ If they have gone on a strike they may publicly or privately state the facts which gave rise to their conduct,¹⁸ and may hold meetings and make speeches and addresses, for the purpose of attracting and gaining new converts to their way of thinking.¹⁹

§ 23. Publication of newspapers.

Unions may publish newspapers for the purpose of improving the condition and protecting the interests of their members in accordance with the rules and objects of the union.²⁰

§ 24. Agreeing to support employers of union men in trade or otherwise.

Unions may obtain employment for their members by promises of support in trade or otherwise to those who give them employment.²¹ They may encourage favorable terms in the purchase of materials, and procure contracts for those giving employment to their members.²²

¹⁶ *My Maryland Lodge v Adt.*, 100 Md. 238, 59 Atl. 721, 68 L. R. A. 752; *Beck v Railway Teamsters' Protective Union*, 118 Mich. 497, 77 N. W. 13, 74 Am. St. Rep. 421, 42 L. R. A. 407; *Butterick Pub. Co. v Typographical Union No. 6*, 100 N. Y. Suppl. 292, 50 Misc. 1; *Sinsheimer v United Garment Workers of America*, 77 Hun. 215, 28 N. Y. Suppl. 321 (Reversing 26 N. Y. Suppl. 152); *Foster v Retail Clerks' International Protective Ass'n*, 78 N. Y. Suppl. 860, 39 Misc. 48; *Cohen v United Garment Workers of America*, 72 N. Y. Suppl. 341, 35 Misc. 748; *Dayton Mfg. Co. v Metal Polishers' Union*, 11 Ohio Dec. 643; *Jensen v Cooks' & Waiters' Union*, 39 Wash. 531, 81 Pac. 1069, 4 L. R. A. N. S. 302. And see opinion of Van Orsdel J. in *American Federation of Labor v*

Bucks' Stove and Range Co., (D. C. App.) 37 Wash. L. Rep. 154, 167.

¹⁷ *Brown Mfg. Co. v Local Union No. 76*, 12 Ohio Dec. N. P. 753.

¹⁸ *Jensen v Cooks' & Waiters' Union*, 39 Wash. 531, 81 Pac. 1069, 4 L. R. A. N. S. 302.

¹⁹ *Cook v Dolan*, 19 Pa. Co. Ct. 401, 6 Pa. Dist. 534. And see *Zieger v Nolan*, 1 N. Y. City Ct. Supp. 54.

²⁰ *Linaker v Pilcher*, 70 L. J. K. B. 396, 49 W. R. 413, 84 L. T. 421, 17 T. L. R. 256. And see opinion of Van Orsdel J. in *American Federation of Labor v Bucks' Stove & Range Co.*, (D. C. App.) 37 Wash. L. Rep. 154, 167.

²¹ *Hey v Wilson*, 232 Ill. 389, 83 N. E. 928, 122 Am. St. Rep. 119, 16 L. R. A. N. S. 85.

²² *Parker v Bricklayers' Union No. 1*, 21 W. L. B. 223, 10 Ohio Dec. 458.

CHAPTER IV.

STRIKES.

- § 25. Definition or description.
- § 26. Elementary principles of the law of torts and conspiracies by which lawfulness of strikes tested—Introductory statement.
- § 27. Right of individual not bound by contract for definite time to quit work.
- § 28. Combination as affecting lawfulness of act which individual has right to commit— —In general.
- § 29. Test for determining lawfulness of combination to commit act.
- § 30. General right of workmen to strike.
- § 31. Strikes to maintain or advance rate of wages, obtain shorter hours of employment or other legitimate advantage—In general.
- § 32. Lawfulness as affected by fact that workmen are employees of receiver,
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- § 34. Strikes to redress grievances of individual members.
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- § 36. Where purpose is to secure employment of efficient and careful fellow-workmen.
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- § 39. Where purpose is to compel workmen outside of the union to join it — — View that strikes or threats of strikes lawful.
- § 40. The contrary view — — — Statement of rule and reasons on which it is based.
- § 41. Application of rule.
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- § 44. Strikes to compel member to pay money due or claimed to be due union.—In absence of statutory provisions.
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- § 48. Strikes to procure discharge of workmen in breach of contract of employment.
- § 49. Strikes to compel employer to submit disputes with individual employes to council of union officers.
- § 50. Strikes in breach of contract of employment.
- § 50a. Inciting strikes in violation of statute providing for reference of disputes to boards of conciliation and investigation.
- § 51. Strikes as an instrumentality for enforcing boycotts.
- § 52. Injunctions to prevent workmen from striking.
- § 53. Injunctions to compel performance of services by employes who elect to remain in the service.
- § 54. Injunctions to restrain officers of unions from inducing or consenting to strikes — Where strike is lawful.
- § 55. Where strike is unlawful— —General rule.
- § 56. Exceptions to rule.
- § 57. Injunctions to restrain intermeddlers from procuring strikes.
- § 58. Operation of strike to terminate relation of employer and employe.

§ 25. Definition or description.

Strikes have been variously defined as follows: "A combination among laborers, or those employed by others, to compel an increase of wages, change in hours of labor, a change in manner of conducting the business of the principal, or to enforce some particular policy in the character or the number of men employed, or the like."¹

"The act of a party of workmen employed by the same master, in stopping work all together at a preconcerted time, and refusing to continue, until higher wages or shorter time, or some other concession is granted to them by the employer."²

"A combined effort of workmen to obtain higher wages or other concessions from their employers by stopping work at a preconcerted time."³

"To press a claim or demand by coercive or threatening action of some kind; in common usage to quit work along with others, in

CROSS REFERENCES.

For other matter relating to strikes necessarily considered in other chapters in this work, see specific cross references from sections in this chapter and the following chapters: V, ACTS IN FURTHERANCE OF STRIKES; VII, BOYCOTTS OF CAPITAL AND THE SUBSTANTIVE LAW RELATING THERETO; XI, EXERCISE BY UNION OF DISCIPLINARY MEASURES AS AFFECTING RIGHTS

OF THIRD PARTIES; XVI, PROCURING BREACH OF CONTRACT; XIV, INTERFERENCE WITH OR OBSTRUCTION OF INTERSTATE COMMERCE; XV, OBSTRUCTING AND RETARDING MAILS; XVIII, CONTEMPT.

¹Delaware, etc. R. Co. v Bowns, 58 N. Y. 581, (adopted in Anderson's Law Dictionary).

²Black's Law Dictionary.

³Bouvier's Law Dictionary.

order to compel an employer to accede to some demand, as for increase of pay, or to protest against something, as a reduction of wages; as to strike for higher pay, or shorter hours of work.”⁴

“To quit work in order to compel an increase or prevent a reduction of wages.”⁵

“To quit work in a body, or by combination in order to compel their employer to raise their wages.”⁶

“The act of workmen in any trade or branch of industry when they leave their work with the object of compelling the master to concede certain demands made by them,—as an advance of wages, the withdrawal of a notice of reduction of wages, a shortening of the hours of work, the withdrawal of any obnoxious rule or regulation, or the like.”⁷

“A combined effort among workmen to compel the master to the concession of a certain demand, by preventing the conduct of his business until compliance with the demand. The concerted cessation of work is but one of, and the least effective of, the means to the end; the intimidation of others from engaging in the service, the interference with, and the disabling and destruction of, property, and resort to actual force and violence, when requisite to the accomplishment of the end, being the other and more effective, means employed.”⁸

“To cease from work in order to extort higher wages as workmen.”⁹

“A simultaneous cessation of work on the part of the workmen.”¹⁰

“To cease working in a body and by prearrangement until a grievance is redressed.”¹¹

“A cessation of work by employes in an effort to get better terms of employment.”¹²

It will be observed that one of these definitions,¹³ makes all strikes

⁴ Century Dictionary.

⁵ Imperial Dictionary.

⁶ Webster's Dictionary.

⁷ Encyclopedic Dictionary.

⁸ Farmers' Loan & Trust Co. v Northern Pac. R. Co., 60 Fed. 803, 821.

⁹ Worcester's Dictionary.

¹⁰ Hannen J. in Farrer v Close, L. R. 4 Q. B. 612, 38 L. J. M. C. 132.

¹¹ National Protective Ass'n v Cumming, 170 N. Y. 315, 63 N. E. 370, 371, 88 Am. St. Rep. 648, 58 L. R. A. 135.

¹² Iron Moulders' Union v Allis-Chalmers Co., 166 Fed. 45, 52, 20 L. R. A. N. S. 315.

¹³ In Farmers' Loan & Trust Co. v Northern Pac. R. Co., 60 Fed. 803, 821.

unlawful. The error in this definition consists in including the means to be used in rendering the strike effective and in enumerating only those means which are unlawful. Some of the other definitions herein set out are defective and misleading in that they attempt to enumerate the specific objects which the combination is designed to effect instead of being confined to a statement of the general object,—i. e., the enforcement of compliance by the employer with a demand of the combination. A careful study of labor disputes will show that these objects are so varied and numerous that any attempt to enumerate them within the narrow compass of a definition is an impossibility and can only result in confusion and error. The better way to define a strike is to exclude from consideration the specific objects which it is designed to effect, and the means to render it effective, which taken singly or in conjunction, determine the legality or illegality of the strike. In accordance with this view, a strike may be defined as a simultaneous cessation of work, by workmen acting in combination to compel their common employer to accede to demands made on him by such combination.

§ 26. Elementary principles of the law of torts and conspiracies by which lawfulness of strikes tested.—Introductory statement.

Before commencing a discussion of the lawfulness of strikes, it is necessary, in order to obtain a working basis for testing the correctness of the decisions relating to the question, to ascertain the basic principles of the law of torts and conspiracies on which a correct determination of the question must rest. As will be shown in the following section, an individual under a contract of service terminable at will has the absolute right to quit the service of his employer whenever he pleases and it is altogether immaterial that his motive for so doing is immoral or corrupt. So as shown in section 28, there are decisions to the effect that an act which an individual may lawfully do, any number of persons acting in concert may lawfully do. If this doctrine taken without qualification is a correct exposition of the law, it would seem that all strikes by workmen under a service contract terminable at will would be lawful, and that any further discussion of the lawfulness of strikes by workmen working under agreements of this character would be superfluous. As will be shown, however, the great weight of authority is that the doctrine that what one may lawfully do many

persons acting in concert may lawfully do, is subject to the important qualification that the lawfulness of the combination depends on the motive for combining or in other words the nature of the object to be obtained as a consequence of the act.¹⁴

§ 27. —Right of individual not bound by contract for definite time to quit work.¹⁵

What one has an absolute right to do, he may do without liability of any character, even though he exercises this right with the malicious intent of inflicting injury on another.¹⁶ And while it must be conceded that absolute rights in society as it is at present constituted are few in number, it seems to be axiomatic that the right of an individual to refrain from contracting whether for labor merchandise or anything else must be placed in this category. As was said by Judge Cooley: "It is a part of every man's civil rights that he be left at liberty to refuse business relations with any person whatsoever, whether the refusal rests upon reason or is the result of whim, caprice, prejudice or malice. With his reasons neither the public nor third persons have any legal concern."¹⁷ "It is

¹⁴ See *Infra* this chapter, section 29.

¹⁵ For correlative right of employer not bound by contract for definite time to discharge employe see *infra* Chapter XIX, *Rights of Employers in Respect of Contracts of Hiring and Validity of Statutes Assuming to Restrict Right*.

¹⁶ *Maine*.—*Heywood v Tillson*, 75 Me. 225, 234, 46 Am. Rep. 373.

Maryland.—*Klingel's Pharmacy v Sharpe*, 104 Md. 218, 64 Atl. 1029, 7 L. R. A. N. S. 976.

New York.—*National Protective Ass'n v Cumming*, 170 N. Y. 315, 321, 63 N. E. 369, 88 Am. St. Rep. 648, 58 L. R. A. 135.

New Jersey.—*Alfred W. Booth & Bro. v Burgess*, 72 N. J. Eq. 181, 65 Atl. 231.

Vermont.—*Raycroft v Taintor*, 68 Vt. 219, 35 Atl. 53, 54 Am. St. Rep. 882, 33 L. R. A. 225.

England.—Lord Brampton in *Quinn*

v Leathem, (1901) A. C. at p. 24; 70 L. J. P. C. 76, 85 L. T. 289, in which it was said: "that the exercise of an absolutely legal right cannot be treated as wrongful and actionable merely because a malicious intention prompted such exercise was established as clear law by the House in *Bradford v Pickles*, (1895) A. C. 587."

And see *Master Builders' Ass'n, Domascio*, 16 Colo. App. 25, 63 Pac. 782; *Chipley v Atkinson*, 23 Fla. 206, 1 So. 934, 11 Am. St. Rep. 367; *Plant Woods*, 176 Mass. 492, 499, 57 N. E. 1011, 79 Am. St. Rep. 330, 51 L. R. A. 339.

¹⁷ Cooley on Torts, p. 278. And see *Alfred W. Booth & Bro. v Burgess*, 72 N. J. Eq. 181, 65 Atl. 226, in which it was said: "The right to refrain from contracting is an absolute right which every man can exercise justly or unjustly for a good purpose 'maliciously' in the popular sense of the term, or benevolently."

damnum absque injuria, if through the lawful and proper exercise by one man of his own rights, a damage results to another, even though he might have anticipated the result and avoided it. That which is right and lawful for one man to do cannot furnish the foundation for an action in favor of another. Nor can the absence of commendable motive on the part of the party exercising his rights be the legal substitute or equivalent for the thing amiss which is one of the necessary elements of a wrong.¹⁸ Hence every free man whether skilled laborer, mechanic, farmer or domestic may work or not work, work or refuse to work with any company or individual at his own option except so far as he is bound by contract,¹⁹ and whatever may be his motive, or whatever may be the resulting injury arising from it, the law can afford no redress.²⁰ The right is one of which a person cannot be deprived even by the legislature itself.²¹ It is clear, then, that one in the employ of another under a contract terminable at will has an absolute right to quit or threaten to quit his employment and his motives for so doing are beyond inquiry.²² In so doing he has nothing to justify or excuse.

§ 28. —Combination as affecting lawfulness of act which individual has right to commit.—In general.

It is also broadly stated in many decisions that what one may lawfully do singly, any number of men acting in combination may do without rendering themselves liable to civil action;²³ that the

¹⁸ Cooley on Torts, p. 81.

¹⁹ *Com. v Hunt*, 4 Met. (Mass.) 111, 133, 38 Am. Dec. 346, (opinion of Shaw C. J.). And see *Master Builders' Ass'n, Damoscio* 16 Colo. App. 25, 63 Pac. 782.

²⁰ *Master Builders' Ass'n v Domascio*, 16 Colo. App. 25, 63 Pac. 782; *Raycroft v Taintor*, 68 Vt. 219, 35 Atl. 53, 54 Am. St. Rep. 882, 33 L. R. A. 225.

²¹ *Purvis v United Brotherhood of Carpenters & Joiners*, 214 Pa. St. 348, 63 Atl. 585, 112 Am. St. Rep. 272, 12 L. R. A. 642.

²² *National Protective Ass'n v Cumming*, 170 N. Y. 315, 321, 338, 63 N. E. 369, 88 Am. St. Rep. 648, 58 L. R. A. 135, *Raycroft v Taintor*, 68 Vt.

219, 35 Atl. 53, 54 Am. St. Rep. 882, 33 L. R. A. 225; and see *Jones v Maher*, 116 N. Y. Suppl. 180, 62 Misc. 388.

²³ *Colorado*.—*Master Builders' Ass'n v Domascio*, 16 Colo. App. 25, 63 Pac. 782.

Iowa.—*DeWolf v Dix*, 110 Iowa 553, 81 N. W. 779; *Beechley v Mulville*, 102 Iowa 602, 70 N. W. 107, 63 Am. St. Rep. 479; *Jacques v Drorbaugh*, 63 Iowa 711, 17 W. W. 433.

Maryland.—*Kimball v Harmon*, 34 Md. 407, 411.

Massachusetts.—*Boston v Simmons*, 150 Mass. 461, 23 N. E. 210, 15 Am. St. Rep. 230, 6 L. R. A. 629; *Wellington v Small*, 3 Cush. 145.

Minnesota.—*Bohn Mfg. Co. v Hol-*

number of men who unite to do the act cannot change its character from lawful to unlawful.²⁴ Taken with certain limitations to be hereinafter noticed,²⁵ this proposition is doubtless correct, but only when so limited. In a number of the cases, where the foregoing proposition was enunciated, what was said was not necessary to a decision, while in others it was correct as limited to the particular facts involved. In still others, however, an examination of the facts makes it clear, that the courts intended to and did hold that this proposition, without any qualifications or limitations whatever, was a sound exposition of the law. Nevertheless this is against the great weight of authority, which is to the effect that while the act of an individual may not be unlawful, yet the same act when committed by a combination of individuals may be unlawful both in the sense of rendering the members of the combination liable to a criminal prosecution, or to an action on the case for damages, or to injunctive process.²⁶ Laws adapted to individuals, it has been said, re-

lis, 55 Minn. 223, 55 N. W. 119, 40 Am. St. Rep. 319, 21 L. R. A. 337.

Missouri.—Hunt v Simmons, 19 Mo. 582.

Montana.—Lindsay v Montana Federation of Labor, 37 Mont. 264, 96 Pac. 127, 127 Am. St. Rep. 722, in which it was said: "There can be found running through our legal literature many remarkable statements that an act perfectly lawful when done by one person becomes by some sort of legerdemain, criminal when done by two or more persons acting in concert and this upon the theory that the concerted action amounts to a conspiracy. But with this doctrine we do not agree. If an individual is clothed with a right when acting alone he does not lose such right merely by acting with others, each of whom is clothed with the same right. If the act done is lawful the combination of several persons to commit it does not render it unlawful."

Texas.—Delz v Winfree, 80 Tex. 400, 16 S. W. 111.

England.—Huntley v Simmonds,

(1898) 1 Q. B. 181; *Cotterell v Jones*, 11 C. B. N. S. 713; *Kearney v Lloyd*, (1890) 26 Ir. 268.

²⁴ *Bohn Mfg. Co. v Hollis*, 55 Minn. 223, 55 N. W. 119, 40 Am. St. Rep. 319, 21 L. R. A. 337.

²⁵ See *Infra* case cited in following notes in this section.

²⁶ *Connecticut*.—*State v Glidden*, 55 Conn. 46, 8 Atl. 840, 3 Am. St. Rep. 23.

District of Columbia.—*Buck Stove & Range Co. v American Federation of Labor*, 35 Wash. L. Rep. 797, 70 Alb. L. J. 8.

Illinois.—*A. R. Barnes & Co. v Chicago Typographical Union*, 232 Ill. 424, 83 N. E. 40, 14 L. R. A. N. S. 1018; *Franklin Union v People*, 220 Ill. 355, 77 N. E. 176, 110 Am. St. Rep. 248, 4 L. R. A. N. S. 1001; *Chicago Coal Co. v People*, 214 Ill. 421, 75 N. E. 770.

Massachusetts.—*Pickett v Walsh*, 192 Mass. 572, 78 N. E. 753, 116 Am. St. Rep. 272, 6 L. R. A. N. S. 753; *Plant v Woods*, 176 Mass. 492, 57 N. E. 1011, 79 Am. St. Rep. 330, 51 L.

quire modification and extension if they are to be applied with effect to large bodies of persons acting in concert." "An organized body

R. A. 339; L. D. Wilcutt & Sons Co. v Driscoll, 200 Mass. 110, 85 N. E. 903; and see Martell v White, 185 Mass. 255, 69 N. E. 1085, 102 Am. St. Rep. 341, 64 L. R. A. 260.

Missouri.—State v Stock Exchange, 211 Mo. 181, 109 S. W. 675, 124 Am. St. Rep. 776; Carter v Oster, 134 Mo. App. 146, 112 S. W. 995.

New Jersey.—State v Donaldson, 32 N. J. L. 151, 90 Am. Dec. 640; Jersey City Printing Co. v Cassidy, 63 N. J. Eq. 759, 53 Atl. 230.

Ohio.—Moores v Bricklayers' Union, 23 W. L. B. 48, 10 Ohio Dec. (Reprint) 665, 668.

Pennsylvania.—Cote v Murphy, 159 Pa. St. 419, 28 Atl. 190, 39 Am. St. Rep. 686, 23 L. R. A. 135; Patterson v Building Trades' Council, 11 Pa. Dist. Rep. 500; Com. v Carlisle, Brightly N. P. 36.

Wisconsin.—State v Huegin, 110 Wis. 189, 85 N. W. 1046, 62 L. R. A. 700.

United States.—Aikens v Wisconsin, 195 U. S. 194, 25 Sup. Ct. 3, 49 L. ed. 154; United States v Trans-Missouri Freight Association, 166 U. S. 290, 17 Sup. Ct. 540, 41 L. ed. 1007; Rocky Mountain Bell Telephone Co. v Montana Federation of Labor, 156 Fed. 809; Allis-Chalmers Co. v Iron Moulders' Union, 150 Fed. 155; Lowe v California Federation of Labor, 139 Fed. 71; Oxley Stave Co. v Coopers' International Union, 72 Fed. 695, (affirmed in 83 Fed. 912, 28 C. C. A. 99; Farmers' Loan & Trust Co. v Northern Pac. R. Co., 60 Fed. 803; Toledo, etc. R. Co. v Pennsylvania Co., 54 Fed. 746, 19 L. R. A. 387, 5 Inters. Com. Rep. 522.

England.—Quinn v Leathem, (1901)

A. C. 495, 511, 70 L. J. P. C. 76, 85 L. T. 289; Giblan v National Laborers' Union, (1903) 2 K. B. 600, 72 L. J. K. B. 907, 89 L. T. 386; Mogul Steamship Co. v McGregor, 23 Q. B. D. 598, (Affirmed in [1892] A. C. 25); Gregory v Brunswick, 6 Man. & G. 205, 3 C. B. 481; Reg. v Parnell, 14 Cox C. C. 508; Reg. v Rowlands, 17 Ad. & El. N. S. 671; and see South Wales Miners' Federation v Glamorgan Coal Co., (1905) A. C. 239, 74 L. J. K. B. 525.

In England, the rule stated in the text has been abrogated so far as trade disputes are concerned by a recent Act of Parliament. This act provides that "An act done in pursuance of an agreement or combination by two or more persons, shall if done in contemplation or furtherance of a trade dispute, not be actionable unless the act if done without any such agreement or combination would be actionable." Act Dec. 21st, 1906, § 1. In a recent case it was said: "So far as concerns a 'trade dispute,' the law as to the consequences in a civil court of combined action, as distinguished from individual action * * * approved in the judgments in Quinn v Leathem, (1901) A. C. 495, and previously in judgments in Mogul Steamship Co. v McGregor (1889 23 Q. B. D. 598) and elsewhere is swept away by this section." Kennedy L. J. in Conway v Wade, (1908) 2 K. B. 844, 858.

²⁷ Lord Lindley in South Wales Miners' Federation v Glamorgan Coal Co., (1905) A. C. 239, 74 L. J. K. B. 525; quoted with approval in Allis-Chalmers Co. v Iron Moulders' Union, 150 Fed. 155.

of men working together can produce results very different from those which can be produced by an individual without assistance,"²⁸ because of the greater power of coercion on the part of the combination,²⁹ "and may make oppressive and dangerous that, which if it proceeded from a single person would be otherwise."³⁰ "And the very fact of the combination may show that the object is simply to do harm, and not to exercise one's own just rights."³¹ "A single individual may well be left to take his chances in a struggle with another individual. But in a struggle with a number of persons combined together to fight an individual, the individual's chance is small, if it exists at all." The result of this greater power of coercion on the part of a combination of individuals is that what is lawful for an individual is not the test of what is lawful for a combination of individuals.³² This conclusion is also in a measure sustained by a recent decision of the Supreme Court of the United States where the principle under consideration was considered from a somewhat different point of view. Here it was urged that the

²⁸ Lord Lindley in *South Wales Miners' Federation v Glamorgan Coal Co.*, (1905) A. C. 239, 74 L. J. K. B. 525; and see *Bailey v Master Builders' Ass'n*, 103 Tenn. 99, 118, 52 S. W. 853, 46 L. R. A. 561.

²⁹ *Pickett v Walsh*, 192 Mass. 572, 78 N. E. 753, 116 Am. St. Rep. 272, 6 L. R. A. N. S. 1067; *Oxley Stave Co. v Coopers' International Union*, 72 Fed. 695; and see cases cited in the following note.

³⁰ *Mogul Steamship Co. v McGregor*, 23 Q. B. Div. 598; *State v Huegin*, 110 Wis. 189, 85 N. W. 1046, 62 L. R. A. 700; *Buck Stove & Range Co. v American Federation of Labor*, (Dist. Col.) 35 Wash. L. Rep. 797, 70 Alb. L. J. 8; *Farmers' Loan & Trust Co. v Northern Pac. R. Co.*, 60 Fed. 803; *Quinn v Leathem* (1901) A. C. p. 528, 70 L. J. P. C. 76, 85 L. T. 289, in which Lord Lindley said: "Numbers may annoy and coerce where one may not. Annoyance and coercion by many may be so intolerable as to become actionable and produce a result

which one alone could not produce," and in which it was said by Lord Brampton, "A number of actions and things not in themselves actionable or unlawful if done separately without conspiracy, may with conspiracy become dangerous and alarming, just as a grain of gunpowder is harmless, but a pound may be highly destructive, or the administration of one grain of a particular drug may be most beneficial as a medicine, but administered frequently and in larger quantities with a view to harm may be fatal as a poison"; *Reg. v Parnell*, 14 Cox C. C. 508 in which it was said: "Acts lawful for one may not be lawful for a combination because the wrong to be effective by a combination assumes a formidable character."

³¹ *Mogul Steamship Co. v McGregor*, 23 Q. B. Div. 598.

³² *Pickett v Walsh*, 192 Mass. 572, 78 N. E. 753, 757, 116 Am. St. 272, 6 L. R. A. N. S. 753.

means to be used by the particular combination were simply the abstinence from making contracts, that a man's right to so abstain cannot be infringed on the ground of motive, and further that it carries with it the right to communicate that intent to abstain to others and to abstain in common with them; that if the statute on which the prosecution was based extends to such a case it must be unconstitutional. Justice Holmes who wrote the opinion of the court, said: "*The fallacy of this argument lies in the assumption that the statute stands no better than if directed against the pure non-feasance of singly omitting to contract* (italics are ours). The statute is directed against a series of acts, and acts of several, the acts of combining, with intent to do other acts. The very plot is an act in itself. * * * But an act, which in itself is merely a voluntary muscular contraction derives all its character from the consequences which will follow it under the circumstances in which it was done. When the act consists of making a combination calculated to cause temporal damage, the power to punish such acts, when done maliciously cannot be denied because they are to be followed and worked out by conduct which might have been lawful if not preceded by the acts. No conduct has such an absolute privilege as to justify all possible schemes of which it may be a part. The most innocent and constitutionally protected of acts or omissions may be made a step in a criminal plot, and if it is a step in a plot neither its innocence nor the Constitution is sufficient to prevent the punishment of the plot by law." ³³

§ 29. — —Test for determining lawfulness of combination to commit act.

Having shown that an act committed by a combination may be unlawful, though the act if committed by an individual would be lawful, and one which he would even have the absolute right to commit, the next question which presents itself for consideration is, what is the test which must be applied in determining the lawfulness or unlawfulness of a combination to commit such acts? The test, it may be said, is the motive for combining or what amounts to the same thing, the nature of the object to be obtained as a consequence of the act.³⁴ Where an act would be lawful if done by an

³³ Aikens v Wisconsin, 195 U. S. 194, 205, 208, 25 Sup. Ct. 3, 49 L. ed. 154.

³⁴ Com. v Carlisle, Brightly N. P. (Pa.) 36; National Fireproofing Co. v Mason Builders' Ass'n, 169 Fed.

individual, it will be lawful if done by a combination, *provided they have no unlawful object in view*.³⁵ Or stating this proposition in other terms, there is nothing in such combination or the carrying out of the object for which it was formed which will furnish any ground for a civil action or a criminal prosecution if the element of malice,—i. e., the absence of just cause or excuse—is not present. So long as the object of the combination is to further its own fair interest or advantage, and not the injury of another, its members are not liable for any injury which is merely incidental.³⁶ On the other hand such combinations are unlawful and criminal conspiracies, though the acts when done by an individual would be innocent, when the acts are done with malice, i. e., with the intention to injure another, or the public without just cause or excuse.³⁷ Intentionally to do that which is calculated in the ordinary course of events

259; and see *Jose v Metallic Roofing Co.* (1908) A. C. 514.

³⁵ *Illinois*.—*Doremus v Hennessey*, 176 Ill. 508, 52 N. E. 924, 68 Am. St. Rep. 203, 43 L. R. A. 797.

Indiana.—*Karges Furniture Co. v Amalgamated Woodworkers' Local Union*, 165 Ind. 421, 75 N. E. 877, 2 L. R. A. N. S. 788; *Clemmit v Watson*, 14 Ind. App. 38, 42 N. E. 367.

Massachusetts.—*Carew v Rutherford*, 106 Mass. 14, 8 Am. Rep. 287.

New York.—*National Protective Ass'n v Cumming*, 170 N. Y. 185, 63 N. E. 369, 88 Am. St. Rep. 648, 58 L. R. A. 135; *Curren v Galen*, 152 N. Y. 33, 46 N. E. 297, 57 Am. St. Rep. 496, 37 L. R. A. 802; *Mills v United States Printing Co.*, 91 N. Y. Suppl. 185, 99 App. Div. 605.

United States.—*Allis-Chalmers Co. v Iron Moulders' Union*, 150 Fed. 155.

England.—See *Jose v Metallic Roofing Co.*, (1908) A. C. 514.

³⁶ *State v Huegin*, 110 Wis. 189, 85 N. W. 1046, 62 L. R. A. 700; *National Fireproofing Co. v Mason Builders' Ass'n*, 169 Fed. 269; *Allis-Chalmers*

Co. v Iron Moulders' Union, 150 Fed. 155.

³⁷ *Massachusetts*.—*Plant v Woods*, 176 Mass. 492, 57 N. E. 1011, 79 Am. St. Rep. 330, 51 L. R. A. 339.

Missouri.—*Carter v Oster*, 134 Mo. App. 146, 112 S. W. 995; *Lohse Patent Door Co. v Fuelle*, 215 Mo. 421, 114 S. W. 997, 22 L. R. A. N. S. 607; *Chas. A. Olcott Planing Mill Co. v Fuelle*, 114 S. W. 1013.

New Jersey.—*Barr v Essex Trades' Council*, 53 N. J. Eq. 117, 30 Atl. 881.

New York.—*W. P. Davis Machinery Co. v Robinson*, 84 N. Y. Suppl. 837, 41 Misc. 329; *Davis v United Portable Hoisting Engineers*, 51 N. Y. Suppl. 180, 28 App. Div. 396.

Pennsylvania.—*Patterson v Building Trades' Council*, 11 Pa. Dist. Rep. 500.

Wisconsin.—*State v Huegin*, 110 Wis. 189, 85 N. W. 1046, 62 L. R. A. 700.

United States.—*Allis-Chalmers Co. v Iron Moulders' Union*, 150 Fed. 155; *Toledo, etc. R. Co. v Pennsylvania Co.*, 54 Fed. 730, 19 L. R. A. 387, 5 Inters. Com. Rep. 522.

England.—*Mogul Steamship Co. v*

to damage another in his property or trade is, when done without just cause or excuse, what the law calls a malicious wrong.³⁸ Just cause or excuse exists only where the injury inflicted is the means to some end legitimately desired and incidental thereto, and is not the result of a specific intent and immediate purpose of injury to others that benefit may ultimately come to the members of the combination. It is entirely wanting when the immediate purpose of the combination is to inflict injury on others and the benefit, if any, to result to the combination is indirect or remote.³⁹ An agreement

McGregor, 23 Q. B. D. 608 (affirmed in [1892] A. C. 25).

³⁸ Bowen L. J. in *Mogul Steamship Co. v McGregor*, 23 Q. B. D. 608; *Brennan v United Hatters of North America*, 73 N. J. L. 729, 65 Atl. 165, 9 L. R. A. N. S. 254; *Barr v Essex Trades' Council*, 53 N. J. Eq. 101, 117, 30 Atl. 881.

³⁹ *Connecticut*.—*State v Stockford*, 77 Conn. 227, 58 Atl. 769, 107 Am. St. Rep. 28.

District of Columbia.—*Buck Stove & Range Co. v American Federation of Labor*, 37 Wash. L. Rep. 154 (affirming 35 Wash. L. Rep. 797, 70 Alb. L. J. 8.)

Illinois.—*A. R. Barnes & Co. v Chicago Typographical Union*, 232 Ill. 424, 83 N. E. 940, 14 L. R. A. N. S. 1018; *Piano & Organ Workers' Union v Piano & Organ Supply Co.*, 124 Ill. App. 352.

Massachusetts.—*Pickett v Walsh*, 192 Mass. 572, 78 N. E. 753, 116 Am. St. Rep. 272, 6 L. R. A. N. S. 1067; *Berry v Donovan*, 188 Mass. 353, 74 N. E. 603, 108 Am. St. Rep. 499, 5 L. R. A. N. S. 899; *Plant v Woods*, 176 Mass. 492, 57 N. E. 1011, 79 Am. St. Rep. 330, 51 L. R. A. 339.

Missouri.—*Burke v Fay*, 128 Mo. App. 690, 107 S. W. 408.

New Jersey.—*Brennan v United Hatters of North America*, 73 N. J.

L. 729, 65 Atl. 165, 118 Am. St. Rep. 727, 9 L. R. A. N. S. 254.

New York.—*Curran v Galen*, 150 N. Y. 33, 46 N. E. 297, 57 Am. St. Rep. 496 37 L. R. A. 802; *W. P. Davis Machinery Co. v Robinson*, 84 N. Y. Suppl. 837, 41 Misc. 329; and see *People v Trequier*, 1 Wheeler's Crim. Cas. 142.

Ohio.—*Hillenbrand v Building Trades' Council*, 14 Ohio Dec. N. P. 628.

Oregon.—*Longshore Printing & Publishing Co. v Howell*, 26 Ore. 527, 38 Pac. 547, 46 Am. St. Rep. 640, 28 L. R. A. 464.

Pennsylvania.—*Purvis v United Brotherhood of Carpenters & Joiners*, 214 Pa. St. 328, 63 Atl. 585, 112 Am. St. Rep. 757, 12 L. R. A. N. S. 642; *Com. v Carlisle*, Brightly N. P. 36.

Wisconsin.—*State v Huegin*, 110 Wis. 189, 85 N. W. 1046, 62 L. R. A. 700.

United States.—*Aikens v Wisconsin*, 195 U. S. 194, 25 Sup. Ct. 3, 49 L. ed. 154; *Loewe v California Federation of Labor*, 139 Fed. 71; *Allis-Chalmers Co. v Iron Moulders' Union*, 150 Fed. 155.

England.—*Quinn v Leathem*, (1901) A. C. 495, 70 L. J. P. C. 76, 85 L. T. 289; *Giblan v National Laborers' Union*, (1903) 2 K. B. 600, 72 L. J. K. B. 907, 89 L. T. 386; *Reg. v Row-*

entered into for the primary purpose of injuring another is not rendered legal by the fact that it may incidentally benefit the parties.⁴⁰

§ 30. General right of workmen to strike.

While, as will be subsequently shown, it is by no means true that all strikes are lawful,⁴¹ there is no question as to the general right of workmen to strike.⁴² Their right to organize and to utilize their organization by instituting a strike is an exercise of the common law right of every man to pursue his calling, whether of labor or business, as he in his judgment sees fit.⁴³ And while they are under no obligation to do so,⁴⁴ they may if so inclined state their reasons for striking, and notice thereof may be given by the strikers themselves, or through the agency of the organization to which they belong.⁴⁵ Expressions are sometimes found in opinions, not neces-

lands, 5 Cox Cr. Cas. 460, 17 Ad. & El. N. S. 671; Reg. v Hewitt, 5 Cox Cr. Cas. 162.

⁴⁰ National Fireproofing Co. v Mason Builders' Ass'n, 169 Fed. 259.

⁴¹ See subsequent sections in this chapter.

⁴² *Massachusetts*.—Pickett v Walsh, 192 Mass. 572, 78 N. E. 753, 116 Am. St. Rep. 272, 6 L. R. A. N. S. 1667.

Missouri.—Hamilton-Brown Shoe Co. v Saxey, 131 Mo. 212, 32 S. W. 1106, 52 Am. St. Rep. 622.

New York.—Tyrpethetæ of City of New York, 117 N. Y. Suppl. 70; New York Central Iron Works v Brennan, 105 N. Y. Suppl. 870; People v Marcus, 97 N. Y. Suppl. 322, 110 App. Div. 255.

Ohio.—State v Bateman, 10 Ohio Dec. 68.

Oregon.—Longshore Printing & Publishing Co. v Howell, 26 Ore. 527, 38 Pac. 547, 46 Am. St. Rep. 640, 28 L. R. A. 464.

Pennsylvania.—Marietta Casting Co. v Thuma, 28 Pa. Co. Ct. 248; Cook v Dolan, 19 Pa. Co. Ct. 401, 6 Pa. Dist. 524.

Washington.—Jensen v Cooks' & Waiters' Union, 39 Wash. 531, 81 Pac. 1069, 48 L. R. A. 302.

United States.—Goldfields Consolidated Mines Co. v Goldfield Miners' Union, 159 Fed. 500, 519; Allis-Chalmers Co. v Iron Moulders Union, 150 Fed. 155; Union Pacific R. Co. v Ruef, 120 Fed. 102, 113; Allis-Chalmers Co. v Reliable Lodge, 111 Fed. 264; Toledo, etc. R. Co. v Pennsylvania Co., 54 Fed. 994, 19 L. R. A. 387, 5 Inters. Com. Rep. 522; Lake Erie, etc. R. Co. v Bailey, 61 Fed. 494; In Re Wabash, 24 Fed. 217.

England.—Lord Lindley in Quinn v Leathem, (1901) A. C. 495, 538, 70 L. J. P. C. 76, 85 L. T. 289.

⁴³ Pickett v Walsh, 192 Mass. 572, 78 N. E. 753, 6 L. R. A. N. S. 1067, 116 Am. St. Rep. 272.

⁴⁴ Union Pac. R. Co. v Ruef, 121 Fed. 106, 113.

⁴⁵ National Protective Ass'n v Cumming, 170 N. Y. 315, 63 N. E. 369, 88 Am. St. Rep. 648, 58 L. R. A. 135; Davis v United Portable Hoisting Engineers, 51 N. Y. Suppl. 801, 28 App. Div. 396; Tallman v Galliard,

sary to a decision of the case, to the effect that workmen not under contract for a definite time acting in concert *have an absolute right to quit work*.⁴⁶ But this proposition tested by the rules relating to torts and conspiracies stated in a preceding section is clearly incorrect.⁴⁷ The lawfulness of a strike depends not only on the means used to render it effective,⁴⁸ but also upon its object.⁴⁹ A combination to quit work is lawful only where its purpose is to obtain a benefit for the parties which they can legally claim.⁵⁰ If the primary object is to injure others in their business or calling,⁵¹ or to compel them to do some criminal or unlawful injury to others,⁵² or to deprive them of their liberty of action without just cause,⁵³ and not to advance the

57 N. Y. Suppl. 419, 27 Misc. 114; and see *Allen v Flood*, (1898) A. C. 1, 67 L. J. Q. B. 119, 77 L. T. 717.

⁴⁶ *Alfred W. Booth & Bro. v Burgess*, 72 N. J. Eq. 181, 65 Atl. 226; *Jersey City Printing Co. v Cassiday*, 63 N. J. Eq. 759, 53 Atl. 237.

⁴⁷ See *Supra* this chapter, section 29.

⁴⁸ See *Infra*, Chapter V, *Acts in Furtherance of Strike*.

⁴⁹ *State v Stockford*, 77 Conn. 227, 58 Atl. 769, 107 Am. St. Rep. 28; *Reynolds v Davis*, 198 Mass. 294, 84 N. E. 457, 17 L. R. A. N. S. 162; *Longshore Printing & Publishing Co. v Howell*, 26 Ore. 527, 38 Pac. 547, 46 Am. St. Rep. 640, 28 L. R. A. 464; *Farrer v Close*, L. R. 4 Q. B. 602, 612, 38 L. J. M. C. 132. See also subsequent sections in this chapter in which the principle is applied.

⁵⁰ *Reg. v Rowlands*, 5 Cox Cr. Cas. 460-461, 17 Ad. & El. N. S. 671; *Reynolds v Davis*, 198 Mass. 294, 84 N. E. 457, 17 L. R. A. N. S. 162; *Thomas v Cincinnati, etc. R. Co*, 62 Fed. 803, 4 Inters. Com. Rep. 788.

⁵¹ *Connecticut*.—*State v Stockford*, 77 Conn. 227, 58 Atl. 772, 107 Am. St. Rep. 28.

Illinois.—*Piano & Organ Workers' Union v Piano & Organ Supply Co.*, 124 Ill. App. 352.

Massachusetts.—*Pickett v Walsh*,

192 Mass. 572, 78 N. E. 753, 6 L. R. A. N. S. 1067, 116 Am. St. Rep. 272; *Plant v Woods*, 176 Mass. 492, 57 N. E. 1011, 79 Am. St. Rep. 330, 51 L. R. A. 339.

New York.—*W. P. Davis Machinery Co. v Robinson*, 84 N. Y. Suppl. 837, 41 Misc. 329.

Ohio.—*Hillenbrandt v Building Trades' Council*, 14 Ohio Dec. N. P. 628.

United States.—*National Fireproofing Co. v Mason Builders' Ass'n*, 169 Fed. 259; *Allis-Chalmers Co. v Reliable Lodge*, 111 Fed. 264; *United States v Cassidy*, 67 Fed. 700; *Toledo, etc. R. Co. v Pennsylvania Co.*, 54 Fed. 746, 19 L. R. A. 387, 5 Inters. Com. Rep. 522; *In Re Higgins*, 27 Fed. 443.

England.—*Reg. v Rowlands*, 5 Cox Cr. Cas. 436, 460, 461, 17 Ad. & El. N. S. 671; *Reg. v Hewitt*, 5 Cox Cr. Cas. 162; *Quinn v Leathem*, (1901) A. C. 495, 70 L. J. P. C. 76, 89 L. T. 289; *Giblan v National Amalgamated Laborers' Union*, (1903) 2 K. B. 600, 89 L. T. 386, 72 L. J. K. B. 902.

⁵² *Toledo, etc. R. Co. v Pennsylvania Co.*, 54 Fed. 730, 19 L. R. A. 389, 5 Inters. Com. 522.

⁵³ *State v Stockford*, 77 Conn. 227, 58 Atl. 772, 107 Am. St. Rep. 28.

interests of the union, except perhaps in some remote or indirect way, the combination is unlawful. The law which allows a combination for the purpose of obtaining a lawful benefit gives no sanction to combinations which have for their immediate purpose the injury or hurt of another.⁵⁴ While members of a union may, in their efforts to improve their condition inflict more or less damage or injury on others, these results should be incidental damage and inconvenience consequent on the operation of general rules lawful in themselves, rather than those which follow a specific intent and immediate purpose of injury to others in order that good may come to themselves.⁵⁵

§ 31. Strikes to maintain or advance rate of wages or to obtain shorter hours of employment or other legitimate advantage.—In general.

Within the rules laid down in Sections 28 and 29 it is clear that unless restrained by contractual relations,⁵⁶ workmen may, in order to maintain or advance the rate of wages or procure shorter hours of employment or to obtain any other legitimate object agree to and quit work in a body,⁵⁷ provided it is done in a peaceable and quiet

⁵⁴ *Reg. v Rowlands*, 5 Cox Cr. Cas. 461, 17 Ad. & El. N. S. 671; *Curran v Galen*, 152 N. Y. 267, 46 N. E. 297, 57 Am. St. Rep. 496, 37 L. R. A. 802; *A. R. Barnes & Co. v Chicago Typographical Union*, 232 Ill. 424, 83 N. E. 840, 14 L. R. A. N. S. 1018; *National Fireproofing Co. v Mason Builders' Ass'n*, 169 Fed. 259.

⁵⁵ *Curran v Galen*, 152 N. Y. 267, 46 N. E. 297, 57 Am. St. Rep. 496, 37 L. R. A. 802; *Purvis v United Brotherhood of Carpenters & Joiners*, 214 Pa. St. 328, 63 Atl. 585, 112 Am. St. Rep. 757, 12 L. R. A. N. S. 642.

⁵⁶ *State v Stockford*, 77 Conn. 227, 58 Atl. 772, 107 Am. St. Rep. 28; *Jetton-Dehkle Lumber Co. v Mather*, 53 Fla. 969, 43 So. 590; *Connett v United Hatters of North America*, (N. J.) 74 Atl. 188; *Wabash R. Co. v Hannahan*, 121 Fed. 563; *United States v Haggerty*, 116 Fed. 505; *Uni-*

ted States v Stevens, 2 Hask. 164, Fed. Cas. 16, 392. And see *A. R. Barnes & Co. v Berry*, 156 Fed. 72.

⁵⁷ *California*.—*Pierce v Stablemens' Union*, 103 Pac. 323, 327; *J. F. Parkinson Co. v Building Trades' Council*, 154 Cal. 5, 98 Pac. 1027, 21 L. R. A. N. S. 550.

Connecticut.—*State v Stockford*, 77 Conn. 227, 58 Atl. 772, 107 Am. St. Rep. 28.

Illinois.—*Beaton v Tarrant*, 102 Ill. App. 124.

Indiana.—*Karges Furniture Co. v. Amalgamated Woodworkers' Local Union*, 165 Ind. 421, 75 N. E. 877, 2 L. R. A. N. S. 788; *Clemmit v Watson*, 14 Ind. App. 38, 42 N. E. 367.

Maryland.—*My Maryland Lodge v Adt*, 100 Md. 238, 59 Atl. 721, 68 L. R. A. 752.

Massachusetts.—*L. D. Wilcutt & Sons Co. v Driscoll*, 200 Mass. 110, 85

N. E. 897; *Pickett v Walsh*, 192 Mass. 572, 78 N. E. 753, 116 Am. St. Rep. 572, 6 L. R. A. N. S. 1067.

Michigan.—*Beck v Railway Teamsters' Protective Union*, 118 Mich. 497, 77 N. W. 13, 74 Am. St. Rep. 421, 42 L. R. A. 407.

Minnesota.—*Gray v Building Trades' Council*, 91 Minn. 171, 179, 97 N. W. 663, 63 L. R. A. 753, 103 Am. St. Rep. 477; *Bohn Mfg. Co. v Hollis*, 54 Minn. 223, 55 N. W. 1119, 40 Am. St. Rep. 319, 21 L. R. A. 337.

New Jersey.—*George Jonas Glass Co. v Glass Bottle Blowers' Ass'n*, 72 N. J. Eq. 653, 66 Atl. 953; *Connett v United Hatters of North America*, 74 Atl. 188; *Jersey City Printing Co. v Cassiday*, 63 N. J. Eq. 759, 53 Atl. 230; *Barr v Essex Trades' Council*, 53 N. J. Eq. 101, 30 Atl. 881.

New York.—*National Protective Ass'n v Cumming*, 170 N. Y. 315, 63 N. E. 369, 88 Am. St. Rep. 648, 58 L. R. A. 135 (affirming 65 N. Y. Suppl. 946); *Searle Mfg. Co. v Terry*, 106 N. Y. Suppl. 438, 56 Misc. 265; *Krebs v Rosestein*, 66 N. Y. Suppl. 42, 31 Misc. 66; and see *People v Gill*, 5 N. Y. Cr. Rep. 509 [In this case it was said that a strike to obtain an advance in wages is not an offense but if there is no relation direct or indirect between wages and the strike the combination which bring the latter about are criminal conspiracies]; and dictum in *People v Melvin*, 2 Wheeler's Crim. Cas. 262-280.

North Carolina.—*State v Van Pelt*, 136 N. C. 633, 49 S. E. 177, 68 L. R. A. 700.

Ohio.—*Brunsman v Atherton*, 12 Ohio Dec. N. P. 547; *Brown Mfg. Co. v Local Union No. 76*, 12 Ohio Dec. N. P. 753; *Parker v Bricklayers' Union No. 1*, 21 W. L. B. 223, 10 Ohio Dec. (Reprint) 458.

Oregon.—*Longshore Printing & Publishing Co. v Howell*, 26 Ore. 527, 38 Pac. 547, 46 Am. St. Rep. 640, 28 L. R. A. 464.

Pennsylvania.—*Erdman v Mitchell*, 207 Pa. St. 79, 56 N. E. 327, 99 Am. St. Rep. 783, 63 L. R. A. 534; *Morris Run Coal Co. v Guy*, 14 Pa. Dist. Rep. 600; *Patterson v Building Trades' Council*, 10 Pa. Dist. Rep. 500.

Virginia.—*Everett-Waddey Co. v Richmond Typographical Union*, 105 Va. 188, 53 S. E. 273, 5 L. R. A. N. S. 792.

Washington.—*Jensen v Cooks' and Waiters' Union*, 39 Wash. 531, 81 Pac. 1069, 48 L. R. A. N. S. 302.

United States.—*Carter v Fortney*, 170 Fed. 465; *Hitchman Coal Co. v Mitchell*, 172, Fed. 963; *Iron Moulders' Union v Allis-Chalmers Co.*, 166 Fed. 45; 20 L. R. A. N. S. 315; *A. R. Barnes & Co. v Berry*, 157 Fed. 883; *Wabash, etc. R. Co. v Hannahan*, 121 Fed. 563; *Arthur v Oakes*, 63 Fed. 310, 11 C. C. A. 320, 321, 25 L. R. A. 414, 4 Inters. Com. Rep. 744; *Thomas v Cincinnati, etc. R. Co.*, 62 Fed. 803, 4 Inters. Com. Rep. 788; *United States v Stevens*, 2 Hask. 164, Fed. Case, 16,392.

England.—*Quinn v Leathem*, (1901) A. C. 495, 538, 70 L. J. P. C. 76, 85 L. T. 289; *Farrer v Close*, L. R. 4 Q. B. 602, 612, 38 L. J. M. C. 132; *Reg v Duffield*, 5 Cox Crim. Cas. 404, 431; *Lyon v Wilkins*, (1896) 1 Ch. 833, 65 L. J. Ch. 146, 74 L. T. 358.

With respect to the law relating to combinations of workmen nothing can be more clearly established than that they have a right to agree among themselves to say: "We will not go into any employ unless we can get a certain rate of wages." Each man for himself may say, "I will go into no employ unless I can get a certain

manner and without violence or destruction of property.⁵⁸ A strike for the purposes mentioned is just and praiseworthy, and is not a combination for the purpose of doing harm malevolently for the sake of the harm as an end in itself, and not merely as a means to some further end legitimately desired.⁵⁹ So long as the strike is for a legitimate purpose the fact that injury results to the employer, does not alter the character of the act and render it unlawful.⁶⁰ If ruin to the employer results from the peaceable assertion by workmen of their rights, it is a damage without a remedy.⁶¹ Indeed it is readily seen that if the quitting of the employment resulted in no injury to the employer, the object of the combination would necessarily fail. The right to strike for the purposes mentioned is so far absolute, that the courts have as yet discovered no right to which it must yield.

rate of wages," and all of them if they choose may say, "We will agree with one another in our trade as able-bodied workmen; we will not take employ unless the employers agree to give a certain rate of wages." Reg. v Duffield, 5 Cox Crim. Cas. 404, 431.

⁵⁸ *Karges Furniture Co. v Amalgamated Woodworkers' Union*, 165 Ind. 421, 75 N. E. 877, 2 L. R. A. N. S. 788; *Wabash, etc. R. Co. v Hannah*, 121 Fed. 563, in which it was said: "The clear line of demarcation recognized by all the authorities recognized by all the authorities, is that the lawful and permissible strike must not be attended by violence to or destruction of property, or by other coercive measures intended to prevent the employer from securing other employes or otherwise carrying on his business according to his judgment; *Lake Erie, etc. R. Co. v Bailey*, 61 Fed. 594; *In Re charge to Grand Jury*, 62 Fed. 840.

⁵⁹ *Longshore Printing & Publishing Co. v Howell*, 26 Ore. 527, 38 Pac. 547, 46 Am. St. Rep. 640, 28 L. R. A. 464; *Iron Moulders' Union v Allis-Chalmers Co.*, 166 Fed. 45, 20 L. R.

A. N. S. 315; and see *Nat'l Protective Ass'n v Cumming*, 170 N. Y. 315, 63 N. E. 369, 88 Am. St. Rep. 648, 58 L. R. A. 135; *Mills v United States Printing Co.*, 99 N. Y. App. Div. 605, 97 App. Div. 605.

⁶⁰ *Connecticut*.—*State v Stockford*, 77 Conn. 227, 58 Atl. 769, 107 Am. St. Rep. 28.

Indiana.—*Karges Furniture Co. v Amalgamated Woodworkers' Union*, 165 Ind. 421, 75 N. E. 877, 2 L. R. A. N. S. 788.

Maryland.—*My Maryland Lodge v Adt*, 100 Md. 238, 59 Atl. 721, 68 L. R. A. 752.

Minnesota.—*Gray v Building Trades' Council*, 91 Minn. 171, 97 N. W. 663, 103 Am. St. Rep. 477, 63 L. R. A. 753.

United States.—*Allis-Chalmers Co. v Iron Moulders' Union*, 150 Fed. 155; *Arthur v Oakes*, 63 Fed. 310, 11 C. C. A. 320, 321, 25 L. R. A. 414, 4 Inters. Com. Rep. 744.

⁶¹ *My Maryland Lodge v Adt*, 100 Md. 238, 59 Atl. 721, 68 L. R. A. 752. See also *State v Stockford*, 77 Conn. 227, 58 Atl. 774, 107 Am. St. Rep. 28.

§ 32. —Lawfulness as affected by fact that workmen are employes of receiver.

Thus the right is in no way affected by the fact that the employer is a receiver managing property under the control of the court.⁶² In respect of the right to strike they are on the same footing as the employes of private parties and corporations.⁶³ As was said by Justice Harlan, "If in good faith and peaceably they exercise their right of quitting the service, intending thereby only to better their condition, but not to injure or interfere with the free action of others, they cannot be legally charged with any loss to the trust property resulting from their cessation of work in consequence of the refusal of the receivers to accede to the terms upon which they were willing to remain in the service. Such a loss, under the circumstances stated would be incidental to the situation, and could not be attributed to employes exercising their lawful rights in orderly ways."⁶⁴

§ 33. —Lawfulness as affected by the Sherman Anti-Trust act, Interstate Commerce Act, and statute prohibiting obstruction of the mails.

So it has been declared by no less an authority than the Supreme Court of the United States that the right is not affected by the Sherman Anti-Trust Act, although the exercise of the right would enhance the cost of transporting interstate freight,⁶⁵ and by the lower Federal courts that a strike for the purposes under consideration is not in violation of the Interstate Commerce Act, though it may incidentally result in interference with the interchange of traffic with connecting lines,⁶⁶ nor in violation of section 3995 of the Revised Statutes of the United States making it an offense to retard the mails, even though the strike may incidentally retard the mails.⁶⁷

⁶² *Arthur v Oakes*, 63 Fed. 310, 11 C. C. A. 209, 25 L. R. A. 414, 4 Inters. Com. Rep. 744; *United States v Kane*, 23 Fed. 748; *In Re Higgins*, 27 Fed. 443.

⁶³ *In Re Higgins*, 27 Fed. 443.

⁶⁴ *Arthur v Oakes*, 63 Fed. 310, 11 C. C. A. 209, 25 L. R. A. 414, 4 Inters. Com. Rep. 744.

⁶⁵ See *Infra* Chapter XIV, *Interference With or Obstruction of Interstate Commerce*, section 189.

⁶⁶ See *Infra* Chapter XIV, *Interference With or Obstruction of Interstate Commerce*, section 194.

⁶⁷ See *Infra* Chapter XV, *Obstruction and Retarding Mails*, section 199.

§ 34. Strikes to redress grievances of individual members.

There is nothing unlawful in a strike to redress grievances of individual employees.⁶⁸ Thus it would seem that members of a union may lawfully strike to secure the reemployment of a member they regard as having been improperly discharged.⁶⁹ "The very object of labor organizations" it has been said, "is to impart to every laborer the strength of all. A great nation will go to war to maintain the rights of its humblest citizen. * * * The cause of one laborer is the cause of all laborers. * * *"⁷⁰ It was also said in another decision that "it is right that all the members of a union should unite for the protection of the interests of every individual member. If the feeblest of its members has a just grievance as an employe against their common employer, it is proper that the whole combination should act together to obtain redress of the wrong. The most effective way of enforcing the right of every member to just treatment from his employer, in reference to wages, hours of labor and other things affecting his interests is by withholding the labor of the union until justice shall be done."⁷¹

§. 35. Strikes to prevent employment or procure discharge of non-union workmen, or workmen of another union.—In general.

The purpose of this and Sections 36 to 44a inclusive is a consideration of the question whether members of a union acting in combination have the right to strike or make threats of strike in order to prevent the employment or procure the discharge of non-union workmen or workmen of another union, and if so, whether this right is an absolute or qualified one. This question is the most difficult of any within the whole range of strike law, and the decisions in which it is involved are very conflicting. Some decisions appar-

⁶⁸ See opinion of Knowlton C. J. in *Reynolds v Davis*, 198 Mass. 294, 302, 84 N. E. 457, 17 L. R. A. N. S. 162, and cases cited in the following notes.

⁶⁹ *Nat'l Protective Ass'n v Cumming*, 170 N. Y. 315, 63 N. E. 369, 88 Am. St. Rep. 315, 58 L. R. A. 135 (Dictum of Parker C. J.). And see *Pierce v Stablenens' Union*, (Cal.) 103 Pac. 323, 327.

⁷⁰ Opinion of Judge Caldwell in *Hopkins v Oxley Stove Co.*, 83 Fed. at page 935, 28 C. C. A. 99.

⁷¹ Dissenting opinion of Knowlton C. J. in *Reynolds v Davis*, 198 Mass. 294, 302, 84 N. E. 457, 17 L. R. A. N. S. 162. It is to be noted that there is nothing in the majority opinion which in any way conflicts with the above view, on the contrary it was said (at p. 300): "We do not mean to say that a labor union cannot combine to support a committee to take up grievances in behalf of the grievances of the several members."

ently take the view that the right does not exist at all, others that it is absolute, and still others pursue a middle course and hold that the lawfulness of the combination depends on motive. The last mentioned class of cases is by far the largest, but the conflict of views does not end here, because the courts are not agreed on the question of what constitutes proper motive. Much of this conflict is due to the fact that the rights of the parties arrayed against each other are so nearly in equilibrium, that reasonable minds may well differ as to which should yield to the other. Some of it, however, may perhaps be ascribed to an inadequate conception of the elementary principles of the law of torts and conspiracies involved in a judicial settlement of trade disputes of the character under consideration.

(1) In some of the earlier decisions where the question was considered from the standpoint of the injury to the employer, it was held without qualification that it is unlawful for workmen to combine and notify their employer that they would quit his employ unless other workmen in his employ were discharged and that the members of the combination were punishable as for a criminal conspiracy. These decisions proceed upon the theory that workmen have no right to dictate to their employer whom he shall employ, and that acts of this character amount to an unwarrantable interference with his business.⁷² In one of them it was said: "If the manufacturer can be compelled in this way to discharge two or more hands, he can, by similar means, be coerced to retain such workmen as the conspirators may choose to designate. So his customers may be proscribed, and his business in other respects controlled. I cannot regard such a course of conduct as lawful. It is no answer to the above considerations to say, that the employer is not compelled to submit to the demand of his employes; that the penalty of refusal is simply that they will leave his service. There is this coercion; the men agree to leave simultaneously, in large numbers and by

⁷² *State v Donaldson*, 32 N. J. L. 151, 90 Am. Dec. 640; *Rex v Bykerdyke*, 1 Moo. & Rob. 179. And see as sustaining this view *Reg. v Druitt*, 10 Cox Cr. Cas. 593, 601, in which it was said: "If any set of men agreed among themselves to coerce that liberty of mind and thought (i. e. to say how he should bestow himself and his

means, his talents and his industry) by compulsion and restraint, they would be guilty of a criminal offense, namely that of conspiring against the liberty of mind and freedom of will of those towards whom they so conducted themselves"; *Reg. v Bunn*, 12 Cox Cr. Cas. 316.

preconcerted action. We cannot close our eyes to the fact, that the threat of workmen to quit the manufacturer, under these circumstances, is equivalent to a threat, that unless he yield to their unjustifiable demand, they will derange his business, and thus cast a heavy loss upon him. The workmen who make this threat understand it in this sense, and so does their employer. In such a condition of affairs, it is idle to suggest that the manufacturer is free to reject the terms which the confederates offer. In the natural position of things, each man acting as an individual, there would be no coercion; if a single employe should demand the discharge of a co-employe, the employer would retain his freedom, for he could entertain or repel the requisition without embarrassment to his concerns; but in the presence of a coalition of his employes, it would be but a waste of time to pause to prove that, in most cases, he must submit, under pain of often the most ruinous losses, to the conditions imposed on his necessities.⁷³ The rule enunciated by these decisions has been freely criticised by courts and text-writers,⁷⁴ and it has been said, and very properly, that it has always rested on a doubtful basis.⁷⁵ There are, nevertheless, a few recent decisions in which very similar conclusions are reached. Thus in one decision it was *said* that the "closed shop" (a shop where only union men are employed) is against public policy.⁷⁶ And in a decision of the Illinois Supreme Court it was *said* that threats to call a strike to compel an employer to sign an agreement, containing among other things a provision that the employer should hire only union men was in violation of the right of the employer and unjust and oppressive to workmen who did not belong to the union, and that any attempt to compel an individual, firm or corporation, to execute an agreement to conduct his or its business through certain agencies or by a particular class of employes is not only unlawful and actionable, but it is an interference with the exercise of the highest civil right.⁷⁷ So

⁷³ *State v Donaldson*, 32 N. J. L. 151, 90 Am. Dec. 640.

⁷⁴ *Wright on Criminal Conspiracies and Agreements*, pp. 50-59; *Pennant on "Trade Unions and the Law,"* pp. 88, 89; *Gibson v Lawson*, (1891) 2 Q. B. 545, 17 Cox C. C. 354, 61 L. J. M. C. 9, 65 L. T. 573. And see opinion of Chief Judge Parker in

Nat'l Protective Ass'n v Cumming, 170 N. Y. 315, 63 N. E. 369, 88 Am. St. Rep. 648, 58 L. R. A. 135.

⁷⁵ *Pennant on "Trade Unions and The Law,"* p. 88.

⁷⁶ *A. R. Barnes & Co. v Berry*, 156 Fed. 72.

⁷⁷ *O'Brien v People*, 216 Ill. 354, 75 N. E. 108, 108 Am. St. Rep. 219.

in another decision by the same court, it was *held* (two judges dissenting) that a combination by members of a union to compel an employer to hire only union men, by preventing him from obtaining laborers to work for him, is an unjustifiable interference with the employer's right to conduct his business as he chooses and employ whom he pleases, and that an injunction will lie to prevent the doing of any acts, even the use of peaceable persuasion to prevent persons from remaining in his employ or seeking employment with him.⁷⁸ This decision necessarily implies the unlawfulness of the strike in aid of which the acts enjoined were perpetrated, because the right to use in aid of a lawful strike, peaceable persuasion, to induce others not bound by contract for a definite time to quit working for or not to enter the service of one against whom the strike is in operation is universally conceded.⁷⁹ In order to sustain the conclusions reached in the decisions considered in this sub-division it seems necessary to accept as sound law, the proposition that the motive for the strike for the purpose under consideration is necessarily malicious—that under no circumstances could just cause or excuse exist, a proposition which is unquestionably against the great weight of authority and not sustainable on principle.⁸⁰

(2) On the other hand dicta are found in some decisions which go to the other extreme. In these decisions it is said that members of a union have an absolute right to strike, and to inform the employer that they will strike if non-union men in his employ are not discharged; that the motives, purposes and intentions in exercising their right are altogether immaterial;⁸¹ that they are merely dictating the terms upon which they will be employed as they have the right to do.⁸² Tested by the rules laid down in Sections 28 and 29 the dicta set forth in sub-division (2) of this section are obviously incorrect, as ignoring the now well settled principle that what an individual may lawfully do is no criterion for determining the lawfulness of a combination to do the same act, even though such

⁷⁸ A. R. Barnes & Co. v Chicago Typographical Union, 232 Ill. 424, 83 N. E. 940, 14 L. R. A. N. S. 1018, (affirming 133 Ill. App. 20).

⁷⁹ See *Infra* Chapter V, *Acts In Furtherance of Strike*, sections 60 and 61.

⁸⁰ See *Infra* Subdivision (3) in this section.

⁸¹ Jersey City Printing Co. v Cassidy, 63 N. J. Eq. 759, 53 Atl. 230, Alfred W. Booth & Bro. v Burgess, 72 N. J. Eq. 181, 65 Atl. 226; Lord Watson in Allen v Flood, (1908) A. C. 1, 66 W. R. 258, 268.

⁸² Jersey City Printing Co. v Cassidy, 63 N. J. Eq. 759, 53 Atl. 230.

act is one which one person acting singly would have an absolute right to commit, and that the true test for determining the lawfulness of such combination is the motive for combining or in other words the nature of the object to be effected as a consequence of the act.

(3) According to the great weight of authority, so long as they act from a proper motive,—i. e., where the immediate purpose is not to injure others, but to advance their own legitimate interests, and improve their own condition, members of a union, who are not bound by a service contract for a definite time, may without rendering themselves liable either civilly or criminally, refuse to work in company with men who do not belong to their union, and may strike or threaten to strike to procure their discharge from employment,⁸³ or to prevent their being employed in shops where mem-

⁸³ *Florida*.—*Jetton-Dehkle Lumber Co. v Mather*, 53 Fla. 969, 43 So. 590.

Indiana.—*Clemmit v Watson*, 14 Ind. App. 38, 42 N. E. 367.

Massachusetts.—*Pickett v Walsh*, 192 Mass. 72, 78 N. E. 753, 46 Am. St. Rep. 272, 6 L. R. A. N. S. 106; *Com. v Hunt*, 4 Met. 111, 38 Am. Dec. 346. And see *Berry v Donovan*, 188 Mass. 353, 74 N. E. 603, 108 Am. St. Rep. 499, 5 L. R. A. N. S. 899.

Minnesota.—*Gray v Building Trades' Council*, 91 Minn. 171, 97 N. W. 663, 103 Am. St. Rep. 477, 63 L. R. A. 753.

Missouri.—*Carter v Oster*, 134 Mo. App. 146, 112 S. W. 995.

New Jersey.—*Mayer v Journeymen Stone Cutters' Ass'n*, 47 N. J. Eq. 519, 20 Atl. 492. And see *Brennan v United Hatters of North America*, 73 N. J. L. 729, 65 Atl. 165, 170, 9 L. R. A. N. S. 254, which contains a recognition of the principle stated in the text.

New York.—*Nat'l Protective Ass'n v Cumming*, 170 N. Y. 315, 63 N. E. 369, 88 Am. St. Rep. 648, 58 L. R. A. 135; *Mills v United States Printing Co.* 99 N. Y. App. Div. 605, 99 N. Y.

Suppl. 185; *Davis v United Portable Hoisting Engineers*, 28 N. Y. App. Div. 396, 51 N. Y. Suppl. 180; *People v McFarlin*, 89 N. Y. Suppl. 527, 43 Misc. 591; *Tallman v Gaillard*, 57 N. Y. Suppl. 419, 27 Misc. 114; *Wunch v Shankland*, 69 N. Y. Suppl. 349, 59 N. Y. App. Div. 482; *Reform Club of Masons and Plasterers v Laborers' Protective Ass'n*, 60 N. Y. Suppl. 388.

Ohio.—*Parker v Bricklayers' Union No. 1*, 21 W. L. B. 223, 10 Ohio Dec. (reprint) 458.

England.—*Jose v Metallic Roofing Co.* (1908) A. C. 514, (reversing 12 Ont. Law. 200); *Gibson v Lawson*, 17 Cox Cr. Cas. 366, (1891) 2 Q. B. 545, 65 L. T. 573, 61 L. J. M. C. 91; *Walsby v Anly*, 7 Jur. N. S. 465, 466, 3 El. & El. 510, 3 L. T. 666. See also *Wood v Bowron*, 10 Cox Cr. Cas. 344.

And as sustaining this view see *State v Stockford*, 77 Conn. 227, 58 Atl. 769, 107 Am. St. Rep. 28, in which it was held that a combination by members of a union to compel an employer to agree to hire only members of the union is not criminal or unlawful, if entered into for the purpose of advancing the legit-

bers of the union are at work,⁸⁴ and notification of the intention to strike may be given by the members themselves or through the agency of their organization.⁸⁵ On the other hand members of a union acting in concert have no lawful right to refuse to work with men not belonging to their union from purely arbitrary causes, and to use the power of their association to procure the discharge of such men from employment, or to prevent them from obtaining employment by strikes or threats of strikes. In all cases, motive is the test for determining the lawfulness of the combination. If the acts are committed with malice, i. e., without just cause or excuse, the combination is an unlawful one.⁸⁶ No individual or association of individuals has the right to wantonly interfere with the business or trade of others to prevent them from making a living in such business or trade.⁸⁷

imate interests of the members and not with the view of injuring the property and business of the employer, and that the means are also lawful when confined to withdrawing from the service and persuading others to do so.

⁸⁴ *Mayer v Journeymen Stone-cutters' Ass'n*, 47 N. J. Eq. 519, 20 Atl. 492; *Tallman v Gaillard*, 57 N. Y. Suppl. 419, 27 Misc. 114.

⁸⁵ *Nat'l Protective Ass'n v Cumming*, 170 N. Y. 315, 63 N. E. 369, 88 Am. St. Rep. 648, 58 L. R. A. 135; *Tallman v Gaillard*, 57 N. Y. Suppl. 419, 27 Misc. 114; *Davis v United Portable Hoisting Engineers*, 28 App. Div. 396, 51 N. Y. Suppl. 180; *Allen v Flood*, 67 L. J. Q. B., 66 W. R. 258.

⁸⁶ *Maryland*.—*Lucke v Clothing Cutters' Assembly*, 77 Md. 396, 26 Atl. 505, 39 Am. St. Rep. 421, 19 L. R. A. 421.

Massachusetts.—*Plant v Woods*, 176 Mass. 492, 57 N. E. 1011, 79 Am. St. Rep. 330, 51 L. R. A. 339. And see *Pickett v Walsh*, 192 Mass. 572, 78 N. E. 753, 116 Am. St. Rep. 272, 6 L. R. A. N. S. 1067.

Missouri.—*Carter v Oster*, 134 Mo. App. 146, 112 S. W. 995.

New York.—*People v Smith*, 10 N. Y. St. 730, 5 N. Y. Crim. Rep. 512, (affirmed in 15 N. Y. St. 17, 6 N. Y. Crim. Rep. 292, (which in turn is affirmed without opinion in 110 N. Y. 633, 17 N. E. 871, 16 N. Y. St. 996)); *People v Melvin*, 2 Wheeler's Crim. Cas. 262; *People v Trequier*, 1 Wheeler's Crim. Cas. 142.

Pennsylvania.—*Erdman v Mitchell*, 207 Pa. St. 79, 56 Atl. 327, 99 Am. St. Rep. 783, 63 L. R. A. 534; *Housepainters' Ass'n v Feeny*, 13 Pa. Dist. 365, 29 Pa. Co. Ct. 524.

Vermont.—*State v Dyer*, 67 Vt. 690, 32 Atl. 814.

England.—*Skinner v Kitch*, 10 Cox. C. C. 493; *Walsby v Anley*, 7 Jur. N. S. 415, 3 El. & El. 510, 3 L. T. 656.

⁸⁷ *Florida*.—*Chipley v Atkinson*, 23 Fla. 206, 1 So. 934, 11 Am. St. Rep. 367.

Maryland.—*Lucke v Clothing Cutters' Assembly*, 77 Md. 396, 26 Atl. 505, 34 Am. St. Rep. 421, 19 L. R. A. 421.

Massachusetts.—*Pickett v Walsh*, 192 Mass. 572, 78 N. E. 753, 116 Am.

§. 36. —Where purpose is to secure employment of efficient and careful fellow workmen.

In a number of cases it has been held that the refusal of members of a union to work with those who do not belong to their union and strikes or threats of strikes to procure their discharge is lawful, when the motive of their acts is to secure careful and skilled fellow-workmen, and imposes no liability on those joining in such acts either to a civil action for damages or to an injunction or to a criminal prosecution.⁸⁸ And when it can be seen from the facts found by the trial court that such motive or other motives of advantage to themselves, may have prompted the action of the organization, and its members, a reviewing court, which can review only upon the law will not presume that another and an unlawful motive, and one not stated in the findings of fact, prompted their action.⁸⁹ That the rule announced in these cases is correct, is too plain for argument. Acts of the character under consideration find ample justification in the facts that the fellow-servant doctrine except where changed by statute exempts the master from liability for injuries to a servant caused by the negligence of a fellow-servant, and that the only recourse of the injured servant is an action to recover his damages from the servant where negligence caused the injury

St. Rep. 272, 6 L. R. A. N. S. 106; *Plant v Woods*, 176 Mass. 492, 57 N. E. 1011, 51 L. R. A. 339, 79 Am. St. Rep. 330; *Walker v Cronin*, 107 Mass. 555.

New Jersey.—*Brennan v United Hatters of North America*, 73 N. J. L. 725, 65 Atl. 165, 9 L. R. A. N. S. 254; *Barr v Essex Trade Council*, 53 N. J. Eq. 101, 30 Atl. 881; *Frank v Herold*, 63 N. J. Eq. 443, 52 Atl. 152.

New York.—*Curran v Galen*, 152 N. Y. 33, 46 N. E. 297, 55 Am. St. Rep. 496, 37 L. R. A. 802; *Davis v United Portable Hoisting Engineers*, 28 App. Div. 396, 51 N. Y. Suppl. 396.

Ohio.—*Moores v Bricklayers' Union*, 23 W. L. B. 48, 10 Ohio Dec. 665, 7 Ry. & Corp. Law J. 108.

England.—*Temperton v Russell*, (1893) 1 Q. B. 715, 62 L. J. Q. B.

412, 69 L. T. 78; *Gregory v Duke of Brunswick*, 6 M. & G. 205, 13 L. J. C. P. 34, 3 C. B. 481; *Keeble v Hickeringill*, 11 East 574.

And see *Supra* this Chapter, Section 30, and Cases cited in notes; *Infra* Chapter XVI, "*Procuring Breach of Contract*," Sections 247, 249, 250, 251.

⁸⁸ *Clemmit v Watson*, 14 Ind. App. 38, 42 N. E. 367; *Com. v Hunt*, 4 Met. (Mass.) 111, 38 Am. Dec. 346; *Nat'l Protective Ass'n v Cumming*, 170 N. Y. 315, 63 N. E. 369, 88 Am. St. Rep. 648, 58 L. R. A. 135. See also as sustaining this doctrine *Berry v Donovan*, 188 Mass. 353, 74 N. E. 603, 108 Am. St. Rep. 499, 5 L. R. A. N. S. 599.

⁸⁹ *Nat'l Protective Ass'n v Cumming*, 170 N. Y. 315, 63 N. E. 369, 88 Am. St. Rep. 648, 58 L. R. A. 135.

and who is usually "law-proof." As was said by Chief Justice Parker of the New York Court of Appeals: "So long as the law compels the employe to bear the burden of the injury in such cases, it cannot be open to question but that a legitimate and necessary object of labor unions would be to assure the lives and limbs of their members against the negligent acts of a reckless co-employe; it is well known that some men, even in the presence of danger, are perfectly reckless of themselves and careless of the rights of others with the result that accidents are occurring almost constantly which snuff out the lives of workmen as if they were candles, or leave them to struggle through life maimed and helpless. These careless, reckless men are known to their associates, who not only have the right to protect themselves from such men, but, in the present state of the law, it is their duty, through their organizations, to attempt to do it, as to the trades affording special opportunities for mischief arising from recklessness. Hence it is clearly within the right of an organization to provide such a method of examination and such tests as will secure a careful and competent membership, and to insist that protection of life and limb requires that they shall not be compelled to work with men whom they have not seen fit to admit into their organization." ⁹⁰ Every workman assumes many risks arising from the incompetency or negligence of his fellow-workmen. It would be an anomalous doctrine to hold that after his fellows have concluded that he was not a safe or desirable companion, they must continue to work with him under the penalty of paying damages if by their refusal to do so, the works are for a time stopped and he thrown out of employment. ⁹¹

§ 37. —Where purpose is to secure employment of fellow-workmen of good character and conduct.

Expressions are found in some opinions which amount to an extension of the rule laid down in the preceding section. Thus it was *said* by Chief Justice Cockburn in an English decision, that if several persons in the employment of a master, consider others in that employment obnoxious, either personally or on account of their character or conduct, they have a perfect right to put to their employer the alternative whether he will discharge the obnoxious person or

⁹⁰ Nat'l Protective Ass'n v Cumming, 170 N. Y. 315, 63 N. E. 369, 88 Am. St. Rep. 648, 58 L. R. A. 135.

⁹¹ Clemmit v Watson, 14 Ind. App. 38, 42 N. E. 367.

persons and retain their services, or lose them and retain the obnoxious persons,"²² and in a Massachusetts case where the gravamen of the action was the execution of a conspiracy by a combination of union men to procure the discharge of a fellow-servant for refusing to join the union, it was said: "If the plaintiff's habits, or conduct or character had been such as to render him an unfit associate in the shop for ordinary workmen of good character, that would have been a sufficient reason for interference in behalf of his shopmates. * * * But the evidence tended to show that the only reason for procuring his discharge was his refusal to join the union.'" ²³

§ 38. —Where purpose is to secure employment of members of union in preference to non-union men or members of another union.

The refusal of members of a union to work with men who do not belong to their union, and strikes or threats of strikes to cause their discharge,²⁴ or to prevent their obtaining employment,²⁵ is perfectly

²² *Walsby v Anley*, 7 Jur. N. S. 465, 3 El. & El. 516, 3 L. T. 666.

²³ *Berry v Donovan*, 188 Mass. 353, 357, 74 N. E. 603, 108 Am. St. Rep. 499, 5 L. R. A. N. S. 899.

²⁴ *California*.—*J. F. Parkinson Co. v Building Trades' Council*, 154 Cal. 581, 98 Pac. 1027, 21 L. R. A. N. S. 550.

Florida.—*Jetton-Dehkle Lumber Co. v Mather*, 53 Fla. 969, 43 So. 590.

Massachusetts.—*Pickett v Walsh*, 192 Mass. 72, 78 N. E. 753, 46 Am. St. Rep. 272, 6 L. R. A. N. S. 106;

New Jersey.—See dicta sustaining this doctrine in *Brennan v United Hatters of North America*, 73 N. J. L. 729, 65 Atl. 165, 170, 9 L. R. A. N. S. 254.

New York.—*Nat'l Protective Ass'n v Cumming*, 170 N. Y. 315, 63 N. E. 369, 88 Am. St. Rep. 648, 58 L. R. A. 135 (the leading case on the subject); *Mills v United States Printing Co.* 91 N. Y. Suppl. 185, 99 App. Div. 605; *Reform Club of Masons and Plasterers v Laborers' Union Protective Ass'n*, 60 N. Y. Suppl. 388; *Tallman v Gail-*

lord, 57 N. Y. Suppl. 419, 27 Misc. 114; *Davis v United Portable Hoisting Engineers*, 28 App. Div. 396, 51 N. Y. Suppl. 180.

Pennsylvania.—*Purvis v United Brotherhood of Carpenters and Joiners*, 214 Pa. St. 349, 63 Atl. 585, 112 Am. St. Rep. 272, 12 L. R. A. N. S. 242.

England.—(Lord Watson at page 99, Lord Herschall at page 129, Lord McNaghten at page 168) in *Allen v Flood* (1898) A. C. 1, 67 L. J. Q. B. 119, 77 L. T. 717.

Contra.—*Lucke v Clothing Cutters' Assembly*, 77 Md. 396, 26 Atl. 505, 39 Am. St. Rep. 421, 19 L. R. A. 421.

²⁵ *Mayer v Journeymen Stonecutters' Association*, 47 N. J. Eq. 519, 20 Atl. 492. See also as clearly sustaining this view *State v Stockford*, 67 Conn. 227, 58 Atl. 769, 107 Am. St. Rep. 28. (In this case it was held that a combination by members of a union to compel employers among other things to agree to hire only members of the union, is not criminal if

lawful where the motive for so doing is to secure employment of members of the union in preference to those who do not belong to it, whether non-union men,⁹⁶ or members of another union.⁹⁷ Neither the employes whose discharge has been caused nor the employer coerced into discharging his employes have any ground of complaint,⁹⁸ and such acts will not be enjoined at the suit of the workmen injured thereby.⁹⁹ So such acts not being unlawful would not furnish any foundation for an action for damages or a criminal prosecution for conspiracy. This doctrine has been applied both in cases where the acts complained of though restricting the opportunities of workmen not belonging to the union, for finding employment at their trade, did not altogether deprive them thereof,¹ and in cases where the effect of such acts was to deprive them absolutely of any chance to work at their trade, and render it necessary for them to seek employment of a different character.² It has been said—and no

entered into for the purpose of advancing the legitimate interests of the members and not with the view of injuring the property and business of the employers, and that the means are lawful where confined to withdrawing from the service and persuading others to do so; and see *Jose v Metallic Roofing Co.* (1908) A. C. 514 (reversing 12 Ont. Law Rep. 200). In this case it appeared that the members of a union, in order to compel plaintiffs, employers of both union and non-union men to enter into an agreement with the union whereby plaintiffs would agree, among other things to employ none but union men so long as the union was able to supply workmen, called plaintiff's workmen out on strike in the middle of a day's work. The court charged in effect that if the resolutions of the union calling out plaintiff's men were the cause of the strike they were guilty of an actionable wrong, without regard to motive and without regard to the conspiracy alleged. The House of Lords held that this instruction made a new trial necessary.

⁹⁶ *Mills v United States Printing Co.*, 99 App. Div. 305, 91 N. Y. Suppl. 185; *Davis v United Portable Hoisting Engineers*, 51 N. Y. Suppl. 180, 28 App. Div. 396.

⁹⁷ *Pickett v Walsh*, 192 Mass. 72, 78 N. E. 753, 46 Am. St. Rep. 272, 6 L. R. A. N. S. 106; *Nat'l Protective Ass'n v Cumming*, 170 N. Y. 315, 63 N. E. 369, 88 Am. St. Rep. 648, 58 L. R. A. 135.

⁹⁸ See *Supra* cases cited in the two preceding notes.

⁹⁹ See *Supra* cases cited in first two notes in this section.

¹ *Nat'l Protective Ass'n v Cumming*, 170 N. Y. 315, 63 N. E. 369, 88 Am. St. Rep. 648, 58 L. R. A. 135; *Mills v United States Printing Co.*, 91 N. Y. Suppl. 185, 99 App. Div. 605; *Reform Club of Masons and Plasterers v Laborers' Union Protective Ass'n*, 60 N. Y. Suppl. 383; *Tallman v Gaillard*, 57 N. Y. Suppl. 419, 27 Misc. 114.

² *Pickett v Walsh*, 192 Mass. 72, 78 N. E. 753, 46 Am. St. Rep. 272, 6 L. R. A. N. S. 106; *Mayer v Journeymen Stonecutters' Ass'n*, 47 N. J. Eq. 519,

valid reason can be given for limiting or denying the statement—"that competition in labor is in all essentials, analogous to competition in trade, and the same principles apply to each."³ The decisions on the question under consideration proceed upon the theory that such acts are justifiable as legitimate competition; that free competition is worth more than it costs, and that on this ground the infliction of damages is privileged. Within all the authorities upholding the principle of competition, if the motive be to destroy another person's business, in order to secure business for one's self, the motive is good and the resulting damage, *damnum absque injuria*.⁴ Competition whether between individuals, or between combinations of men, carried on for the purpose of gain, even to the extent of intending to and actually accomplishing the result of driving out of business one of the individuals or combinations is not actionable unless there was malice.⁵ Such action on both sides is the exercise by competing persons of equal conflicting rights,⁶ and when equal rights clash, the law cannot interfere.⁷ There is a manifest discrimination, well-recognized, between a combination of workmen to secure the exclusive employment of its members, and a combination whose primary object is to procure the discharge of an outsider and his deprivation of employment. In the first case the action of the combination is primarily for the betterment of its fellow members. In the second case, such action is primarily to impoverish and crush another by making it impossible for him to work there, or so

20 Atl. 422. And see as sustaining the correctness of this view cases cited in subsequent notes in this section.

³ Lord Shand in *Allen v Flood*, (1898) A. C. 1, 103, 67 L. J. Q. B. 119, 77 L. T. 717.

⁴ *Nat'l Protective Ass'n v Cumming*, 170 N. Y. 315, 63 N. E. 369, 88 Am. St. Rep. 648, 58 L. R. A. 135; *Pickett v Walsh*, 192 Mass. 72, 78 N. E. 753, 46 Am. St. Rep. 272, 6 L. R. A. N. S. 106; *Berry v Donovan*, 188 Mass. 353, 357, 74 N. E. 603, 108 Am. St. Rep. 499, 5 L. R. A. N. S. 899; *Bowen v Mathewson*, 14 Allen (Mass.) 670; and see *Doremus v Hennessey*, 176 Ill. 608, 52 N. E. 924, 68 Am. St. Rep. 203, 43 L. R. A.

797; *Walker v Cronin*, 107 Mass. 555; *Karges Furniture Co. v Amalgamated Woodworkers' Union*, 165 Ind. 421, 75 N. E. 877, 2 L. R. A. N. S. 788; *Mogul Steamship Co. v McGregor*, 23 Q. B. D. 598, [affirmed in (1892) A. C. 25].

⁵ *Doremus v Hennessey*, 176 Ill. 608, 52 N. E. 924, 68 Am. St. Rep. 203, 43 L. R. A. 802; *Mogul Steamship Co. v McGregor*, 23 Q. B. D. 598, [affirmed in (1892) A. C. 25].

⁶ *Berry v Donovan*, 188 Mass. 353, 357, 74 N. E. 603, 108 Am. St. Rep. 499, 5 L. R. A. N. S. 899.

⁷ *Nat'l Fireproofing Ass'n*, 169 Fed. L. 259.

far as possible anywhere.⁸ In the leading case on the subject it appeared that walking delegates of defendant union, threatened persons employing members of plaintiff union in various pieces of work upon several buildings in the course of erection, that if they did not discharge the members of plaintiff union and employ members of defendant union in their stead, the walking delegates would cause a general strike of all men employed on the buildings; that they did cause strikes in order to prevent members of plaintiff union from continuing with the work they were doing at the time the strikes were ordered, and that the employers by reason thereof discharged the members of plaintiff association and hired the members of defendant association in their stead. It was held that these acts were lawful within the rule conceding the right of a union, to strike in order to benefit its members, one method of benefiting them being the securing of employment for them. Here the motive for the acts, it was said, is not malice, but on the contrary, the motive which always underlies competition is the animating one. In this case the trial court made a further finding of facts that the walking delegates threatened to cause a general strike against members of plaintiff association wherever they were found at work and that they would not be allowed to work at any job in New York City except some small jobs where men of defendant union were not employed and "threatened to drive the plaintiff association out of existence." The court of last resort took the view that conceding that this finding was justified by the evidence—which the opinion of an intermediate appellate court indicated was not the case—the finding meant no more than that defendant union did not purpose to allow members of plaintiff union to work upon any jobs where members of defendant union were employed; that they were willing to allow them to have small jobs, fitted, perhaps, for men who were willing to work for small wages, but that the larger jobs, where they could afford to pay and would pay the rate of wages demanded by defendant union they intended to secure for their members alone. The conclusion was that they had a perfect right to come to this determination and to notify the members of plaintiff union thereof.⁹ In a decision of the Supreme Court of Massachusetts it appeared that

⁸ *Mills v United States Printing Co.*, 91 N. Y. Suppl. 185, 99 App. Div. 605.

ming, 170 N. Y. 315, 63 N. E. 369, 88 Am. St. Rep. 648, 58 L. R. A. 135; (affirming 53 N. Y. App. Div. 227.)

⁹ *Nat'l Protective Ass'n v Cum-*

two unions one of bricklayers and one of masons sought to get the work of pointing for their members, in accordance with the rules of the union declaring pointing to be a part of the work of masonry and bricklaying. To carry out this purpose, an employer was notified that if he did not discharge all pointers working for him on a designated building all masons and bricklayers working for him on other buildings in Boston would strike. He thereupon suspended work which was being done by the pointers on the building. It was held that these acts were justified by the principles of competition and were not rendered unlawful by the fact that the result is harsh on contractors who prefer to give the work to the pointers because their work is better and cheaper, and because they are relieved from responsibility in case of accident, nor by the fact that the business of the pointers who cannot lay brick and stone may be entirely destroyed.¹⁰ And in a case decided by the New Jersey Chancery Court which is one of the earliest in this country, where an injunction was sought in the settlement of trade disputes, one of the purposes of the suit, was to enjoin a labor union from attempting to prevent master stone-cutters in a designated city and its vicinity from employing non-union journeymen stone-cutters by threats of a strike. These journeymen were unable to obtain admission to the union because of a resolution of the union not to admit any more members for a given period of time. The bill alleged that plaintiffs were refused employment by several master stone-cutters solely on the ground that they were not members of the union and that their employment would result in a strike, that in consequence they had to abandon their trade and accept work at inferior labor with lower wages; and that at the time of such refusal the master stone-cutters needed more men than the union could furnish. Whether these allegations were proved, the opinion does not show, but it is clearly inferable therefrom that these acts were considered lawful. The court dismissed the bill and said among other things, "They (the members of the union) had agreed not to work with any but members of their association, and not to work for any employer who insists on their doing so, by withdrawing from his employment; so long as they confine themselves to peaceable means to effect these ends they are within the letter and spirit of the law and not

¹⁰ *Pickett v Walsh*, 192 Mass. 72, 78 L. R. A. N. S. 106.
N. E. 753, 46 Am. St. Rep. 272, 6

subject to the interference of the courts. It is not unlawful for members of an association to combine together for the purpose of securing the control of the work connected with their trade and to endeavor to effect such purpose by peaceable means.”¹¹ On the other hand a decision of the Maryland Supreme Court seems to be squarely in conflict with the cases heretofore cited. The employer of plaintiff a non-union man, prior to the time of his employment had agreed to employ only union labor if defendant union would include his name among those published monthly in a paper devoted to the interest of labor organizations, and in which members thereof were urged to patronize those whose names were listed and influence their friends to do so. Defendant published the employer’s name as agreed, and several months after plaintiff was employed, notified the employer that if he did not discharge plaintiff all labor organizations of the city would be notified that his house was a non-union one. Previous to sending this notice, plaintiff, who was a competent workman of good character, and in good standing with the employer, had applied for membership in defendant union, and his application was refused *on the ground that many union men were out of employment and for that reason the union had passed a resolution not to accept any more members*. The notice was construed by the employers to mean “that if they retained appellant (plaintiff) in their employ, they would lose the patronage of the labor organizations, and that the union labor which they then employed would be ordered out, or they would have to quit work.” The court considered this construction a reasonable one, although there was evidence that the local law of defendant union and the general law of the union of which it was a branch prohibited the calling out of members because of the employment of non-union men. In consequence of the notice plaintiff was discharged and the court held that defendant was guilty of a wrongful invasion of plaintiff’s rights. No allusion was made to the principle of competition though it is a perfectly legitimate deduction from the facts that defendant’s action was prompted by the motive of securing employment for its unemployed members. If it be conceded that the construction placed on the notice is correct,—and it may well be doubted,—the result reached in this case can probably be sustained on the theory

¹¹ *Mayer v Journeymen Stonecutters’ Ass’n*, 47 N. J. Eq. 519, 20 Atl. 492.

that plaintiff's discharge was caused by a threat to boycott his employer, but so far as the decision is based on the assumed illegality of threats of strike it cannot be sustained.¹³

§ 39. —Where purpose is to compel workmen outside of the union to join it.—View that strikes or threats of strikes lawful.

The decisions are not in accord as to whether strikes or threats of strikes by members of a union to compel the discharge from employment of other workmen unless they join the union are lawful. In some decisions, it is distinctly held that such acts are lawful, and that the discharge of such workmen in consequence thereof furnishes no ground for an action for damages,¹³ a suit for injunction,¹⁴ or a criminal prosecution.¹⁵ This right, it is believed, is also sustained by an early Massachusetts case in which Chief Justice Shaw wrote the opinion of the Court.¹⁶ In this case he said that the indictment alleged in substance "that the defendants and others formed themselves into a society and agreed not to work for any person who should employ any journeyman or other person not a member of such society, after notice given him to discharge such workmen."¹⁷ "The manifest intent of the association is to induce all those engaged in the same occupation to become members of it. Such a purpose is not unlawful. It would give them a power which might be exerted for useful and honorable purposes, or for dangerous and pernicious ones. * * * Nor can we perceive that the objects of this association, whatever they may have been, were to be at-

¹³ Lucke v Clothing Cutters' Assembly, 77 Md. 396, 26 Atl. 505, 39 Am. St. Rep. 421, 19 L. R. A. 408.

¹⁴ Wunch v Shankland, 69 N. Y. Suppl. 349, 59 N. Y. App. Div. 482 (An appeal to the Court of Appeals was dismissed in 170 N. Y. 573). It is unfortunate that a question of such importance could not have been determined by the court of last resort. The appeal, however, was taken from an order granting a new trial upon the facts and upon the law, and by statute such order is not appealable to the Court of Appeals. See also People v McFarlin, 89 N. Y. Suppl. 527, 43 Misc. 591.

¹⁴ Gray v Building Trades' Council, 91 Minn. 171, 97 N. W. 663, 103 Am. St. Rep. 477, 63 L. R. A. 750. And see Mills v United States Printing Co., 91 N. Y. Suppl. 185, 99 App. Div. 605.

¹⁵ People v McFarlin, 89 N. Y. Suppl. 527, 43 Misc. 591; Gibson v Lawson, 17 Cox C. C. 366, (1891) 2 Q. B. 545, 65 L. T. 573, 61 L. J. M. C. 91.

¹⁶ Com. v Hunt, 4 Met. (Mass.) 111, 38 Am. Dec. 346 (reversing Thacher's Crim. Cas. 609).

¹⁷ 4 Met. (Mass.) at p. 128, 38 Am. Dec. 346.

tained by criminal means. The means which they proposed to employ * * * were that they would not work for a person who, after due notice should employ a journeyman not a member of their society. * * * As the object would be lawful and the means not unlawful, such an agreement could not be pronounced a criminal conspiracy.''¹⁸ The exact language of the opinion is set out here to enable the investigator to form his own opinion as to what was actually held in that case, inasmuch as a recent Massachusetts case¹⁹ in which this case is cited, and which is considered in the following section denies the right under discussion.

§ 40. —The contrary view.—Statement of the rule and reasons on which it is based.

The weight of authority is against the view taken by the decisions considered in the preceding section. It has been held in a number of decisions that the refusal of a workman to join a union when requested furnishes no justification in law for an agreement among its members to procure his discharge from employment and to prevent his obtaining or retaining other employment by strikes or threats of strikes, or for the execution of such an agreement,²⁰ that

¹⁸ 4 Met. (Mass.) pp. 129, 130, 38 Am. Dec. 346.

¹⁹ *Plant v Woods*, 176 Mass. 492, 57 N. E. 1011, 79 Am. St. Rep. 330, 51 L. R. A. 339.

²⁰ *Massachusetts*.—*Plant v Woods*, 176 Mass. 492, 57 N. E. 1011, 79 Am. St. Rep. 330, 51 L. R. A. 339.

New York.—*People v Smith*, 10 N. Y. St. 730, 5 N. Y. Crim. 512, (affirmed in N. Y. St. 17, 6 N. Y. Crim. 292.)

Pennsylvania.—*Erdman v Mitchell*, 207 Pa. St. 79, 56 Atl. 327, 99 Am. St. Rep. 783, 63 L. R. A. 534; *House-painters' Ass'n v Feeny*, 13 Pa. Dist. Rep. 333, 29 Pa. Co. Ct. 524.

Vermont.—*State v Dyer*, 67 Vt. 690, 32 Atl. 814.

England.—*Skinner v Kitch*, 10 Cox C. C. 493 under a statute (since repealed) making it an offense for any

person by threats, or intimidation, force or endeavor, to force any manufacturer or person carrying on any trade or business to limit the number of his apprentices or the number or description of his workmen, journeymen or servants.) Opinion of Brampton J. in *Quinn v Leatham*, (1901) A. C. 495, 526, 70 L. J. P. C. 76, 85 L. T. 289.

And see as sustaining this view *Perkins v Pendleton*, 90 Me. 166, 38 Atl. 96, 60 Am. St. Rep. 252, where it was held that the refusal of a workman to join a union furnished no justification for the acts of its members in procuring his discharge from employment by fraud and intimidation. The report of the case does not show the character of the intimidation, but it may very well have been strikes or threats of strike against his employer.

a conspiracy to do such acts renders the members criminally liable,²¹ in the absence of some statute otherwise providing,²² that the officers of the union may be enjoined in a suit brought by workmen at whom the conspiracy is aimed to prevent a continuance of such acts as threatening or calling strikes,²³ and that an action will lie to recover the damages resulting from the execution of such conspiracy.²⁴ This view is also clearly sustained by other decisions in which the question is not directly involved.²⁵ The doctrine, it has been held, ap-

²¹ *State v Dyer*, 67 Vt. 690, 32 Atl. 814; *People v Smith*, 10 N. Y. St. 730, 5 N. Y. Crim. 512, (affirmed in 15 N. Y. St. 17, 6 N. Y. Crim. 292); *Skinner v Kitch*, 10 Cox C. C. 493.

²² *Erdman v Mitchell*, 207 Pa. St. 79, 56 Atl. 327, 99 Am. St. Rep. 783, 63 L. R. A. 534, in which it was said that the fact that the legislature has declared that such acts shall not be deemed criminal does not render them lawful. To declare such acts not punishable criminally is as far as the legislature could go without abolishing the declaration of rights.

²³ *Plant v Woods*, 176 Mass. 492, 57 N. E. 1011, 79 Am. St. Rep. 330, 51 L. R. A. 339; *Erdman v Mitchell*, 207 Pa. St. 79, 56 Atl. 327, 99 Am. St. Rep. 783, 63 L. R. A. 534; *House-painters' Ass'n v Feeney*, 13 Pa. Dist. Rep. 335, 29 Pa. Co. Ct. 524.

²⁴ See *Perkins v Pendleton*, 90 Me. 166, 38 Atl. 96, 60 Am. St. Rep. 252.

²⁵ *Berry v Donovan*, 188 Mass. 353, 74 N. E. 603, 108 Am. St. Rep. 449, 5 L. R. A. N. S. 899, holding that the refusal of a workman to join a union to which his shop-mates belonged furnished no justification for their acts in demanding and procuring his discharge from employment in accordance with a contract between the employer and the union providing that he should not retain in his employ any workmen who was objectionable to the union from any cause; Opinion of

Knowlton C. J. in *Reynolds v Davis*, 198 Mass. 294, 84 N. E. 457, 17 L. R. A. N. S. 162, in which it was said that a strike to compel all workmen to join the union for the purpose of creating a monopoly in the labor market, whereby to contend successfully with the employers whenever a controversy arose is not justifiable on principles of competition either as against non-union workmen or as against the employer; *Curran v Galen*, 152 N. Y. 33, 37, 46 N. E. 297, 57 Am. St. Rep. 496, 37 L. R. A. 802 (affirming 28 N. Y. Suppl. 1134), in which it was held that a contract between an association of employers comprising all the breweries in the city of Rochester and a labor union, providing that employes of members of the association should be members of the union and that no employe should work for more than four weeks without becoming a member was against public policy and void, and presented no defense to the acts of the members of the union in procuring his discharge for refusal to join the union; *Longshore Printing & Publishing Co. v Howell*, 26 Ore. 527, 38 Pac. 547, 46 Am. St. Rep. 640, 28 L. R. A. 464 (In this and the two cases cited immediately after it, it was said that no resort can be had to compulsory methods of any kind to increase membership); *Reinecke Coal Min. Co. v Wood*, 122 Fed. 477; *Old Dominion*

plies though no acts of personal violence or of physical injury to property are committed, and though those acting in pursuance of the agreement have been courteous in their manners.²⁶ Nor is it important that apt language precisely expressing a threat to strike be used. It is sufficient that the meaning of the acts and declarations are well understood by all parties.²⁷ The reasoning advanced in support of the view maintained by these decisions may be summarized as follows. It is not the intention of the actors in such scheme to give fairly to the employer the option to employ them or those who are not members of their union but to compel the latter against their will to join the union and to that end to molest and interfere with them in their efforts to procure work by acts and threats well calculated by their coercive and intimidating nature to overcome the will.²⁸ Such acts are not justifiable as being within the principles of fair competition among workmen. While it may be conceded that one has no right to be protected against competition, he has a right to be free from malicious and wanton interference, disturbance or annoyance. If disturbance or loss come as a result of competition, or the exercise of a like right by others it is *damnum absque injuria* unless some superior right by contract or otherwise is interfered with. But if it comes from the merely wanton or malicious acts of others without the justification of competition or the service of any interest or lawful purpose, it then stands upon a different footing.²⁹ The necessity that outsiders shall join the union is not so great, nor its relation to the rights of members of the union, as compared with the right of outsiders to be free from molestation, such as to bring the acts of the members of the union within the shelter of the principles of trade competition.³⁰ Acts of this character are in violation of the workman's inherent and indefeasible right of acquiring property guaranteed by the Constitution, a right of which the legislature cannot deprive him and which the

Steamship Co. v McKenna, 30 Fed. 48; *A. R. Barnes & Co. v. Berry*, 156 Fed. 72, in which it was said that a "closed shop" is against public policy.

²⁶ *Plant v Woods*, 176 Mass. 492, 57 N. E. 1011, 79 Am. St. Rep. 330, 51 L. R. A. 339.

²⁷ *Erdman v Mitchell*, 207 Pa. St.

79, 56 Atl. 327, 99 Am. St. Rep. 783, 63 L. R. A. 534.

²⁸ *Plant v Woods*, 176 Mass. 492, 57 N. E. 1011, 79 Am. St. Rep. 330, 51 L. R. A. 339.

²⁹ *Walker v Cronin*, 107 Mass. 555.

³⁰ *Plant v Woods*, 176 Mass. 492, 57 N. E. 1011, 79 Am. St. Rep. 330, 51 L. R. A. 339.

law of no labor union can take from him.³¹ While the question is not altogether free from doubt, it is believed that the view taken by the decisions considered in this section is the correct one. Here it would seem that the immediate purpose of the combination must be deemed to be the infliction of injury on workmen who will not join the union, and the benefit to be derived, the indirect and remote one of numerically strengthening the union for future contests with capital in which its members may become involved. If this be so, the case is brought squarely within the rule, stated in a previous section. "Just cause or excuse exists only where the injury inflicted is the means to some end legitimately desired and incidental thereto, and is not the result of a specific intent and immediate purpose of injury to others that benefit may ultimately come to the members of the combination. It is entirely wanting when the immediate purpose of the combination is to inflict injury on others and the benefit if any to result to the combination is indirect or remote."³²

§ 41. — — —Application of rule.

In this connection it will be advantageous to consider some application which the courts have made of the doctrine under consideration. The case of *Erdman v Mitchell*,³³ presented the rather unusual case of two warring trade unions, one incorporated and the other not, invoking the law for the settlement of their respective rights and the determination of their legal conduct in carrying out the purpose of their respective organizations. It was the purpose of the unincorporated union to force into their organization the members of the incorporated union, who on request being made refused to join. Members of both unions were at work on the same building, and before its completion, the unincorporated union declared a strike, which was duly carried into effect. Subsequently, work was resumed under an agreement between the contractors erecting the building and the unincorporated union, by which all members of the rival union at work on the building were discharged. Thereafter the officers of the unincorporated union announced that it intended to pursue the same course in respect of other buildings in the city,

³¹ *Erdman v Mitchell*, 207 Pa. St. 79, 56 Atl. 327, 99 Am. St. Rep. 783, 63 L. R. A. 534.

³² See *Supra* this Chapter, Section 29.

³³ 207 Pa. St. 79, 56 Atl. 327, 99 Am. St. Rep. 783, 63 L. R. A. 534.

until it drove all members of the same craft in the city into their association. The court held that there was an unlawful conspiracy and awarded an injunction for the protection of the members of the incorporated association against a continuance of such acts. In *Housepainters' Association v Feeny*,³⁴ a case almost identical on the facts with *Erdman v Mitchell*, it was held, following that case, that the facts made out a case for relief by injunction. It was also held that the fact that the persons whose employment was endangered by the unlawful acts complained of were members of an incorporated union, does not prevent them from bringing individual suits to enjoin such acts. *Plant v Woods*,³⁵ also arose out of a contest for supremacy between two labor unions of the same craft, the plaintiff union being composed of workmen who had withdrawn from the defendant union. The object of defendants was to have all the members subjected to the rules of their particular union in order that they might have better control over the whole business and to that end they combined to procure plaintiffs the members of the other union to join them. In accordance with this purpose, on plaintiffs' refusal to join them, a duly authorized agent of defendants would visit a shop where one or more of the plaintiffs were at work and inform the employer of the action of the defendant union in resolving not to work in shops where plaintiffs were employed unless they joined defendant union, and ask him to induce such of the plaintiffs as were in his employ to sign applications for reinstatement into defendant union. While defendants were courteous in manner at these interviews and made no threats of personal violence, the employers interviewed were informed that they would have trouble in their business and be subjected to strikes and boycotts if they continued to employ plaintiffs while they persisted in their refusal to join the defendant union, and subsequently they caused strikes to be instituted in shops where strikes would seriously interfere with the business. These acts were held unlawful and an injunction against the further prosecution thereof was granted. In *State v Dyer*,³⁶ it appeared that the prosecutor, a stone-cutter in the employ of a granite company, was requested to join a branch of the National Stonecutters' Union by members

³⁴ 13 Pa. Dist. Rep. 335, 29 Pa. Co. Ct. 524.

³⁵ 176 Mass. 492, 57 N. E. 1011, 79 Am. St. Rep. 330, 51 L. R. A. 339.

³⁶ 67 Vt. 790, 32 Atl. 814.

thereof and was told, that if he refused to do so, a strike would be organized against him in the shop of his employer and that he would be prevented from obtaining work there or in any other shops or works where granite cutting or manufacturing was carried on. On prosecutor's refusal to join the union his employer was notified that unless he was discharged a strike would be ordered. This resulted in his loss of employment, and by reason of representations made by members of the union to other employers, he was unable to get any other employment. The court held that a conviction of criminal conspiracy should be sustained.

§ 42. —Where purpose is to enforce payment of fine imposed by union on workman not a member.

Strikes to procure the discharge of men not belonging to the union, because of their refusal to pay a fine imposed by the union for an alleged infraction of its rules are unlawful and those taking part therein are guilty of a criminal conspiracy.³⁷

§ 43. —Where purpose is to procure discharge of workmen who have pledged themselves not to join in strikes.

The fact that workmen have pledged themselves to the master not to join in strikes has been held to furnish no justification for an attempt by their co-employees to procure their discharge by threats of strike. This it has been held is a criminal conspiracy at common law.³⁸

§ 44. Strikes to compel member to pay money due or claimed to be due union.—In absence of statutory provisions.

It is unlawful for the officers or members of a union to attempt the enforcement of payment of money due from a member to the union, by strikes, or threats of strikes against his employer, and by such means to procure his discharge from employment.³⁹ And *a fortiori* are such acts unlawful where their object is to enforce payment of money not in fact due the union, as for instance a fine imposed without due compliance with the rules and bylaws of the

³⁷ People v Melvin, 2 Wheeler's Crim. Cas. 262.

³⁸ Walsby v Anley, 7 Jur. N. S. 465, 3 El. & El. 516, 30 L. J. M. C. 121, 3 L. T. 666.

³⁹ Giblan v Nat'l Laborers' Union, (1903) 2 K. B. 602, 72 L. J. K. B. 907, 89 L. T. 386; Reg. v Hewitt, 5 Cox C. C. 162; and see Hillenbrand v Building Trades' Council, 14 Ohio Dec. N. P. 628.

union regulating the procedure for the trial of members accused of violating its laws.⁴⁰ Such acts are not done in the course of any justifiable competition,⁴¹ but their object is primarily to injure the member, and not to advance the interests of the union except in some indirect way.⁴² And it has been said that the fact that the member has acted badly and that the union previous to the action taken by it has shown him great forbearance does not alter the character of such acts and make them legal. If he was guilty of a criminal offense, he might and should have been prosecuted, in which case the appropriate punishment would have been meted out to him by a legal tribunal, and if he had failed to pay a just debt the law provides ample means for enforcing payment of it.⁴³ The member deprived of employment by acts of this character has a right of action for the resulting damages, and that too though there was no contract of employment for a definite time.⁴⁴ "Whoever intentionally and without legal justification or excuse procures an employer to discharge his employe, to the damage of the latter is liable to an action for damages at the suit of the employe."⁴⁵ The fact that there was no such contract, merely affects the amount of recovery.⁴⁶ The right of action of a member whose dis-

⁴⁰ *Blanchard v Newark Joint District Council*, N. J. 71 Atl. 1131; *Brennan v United Hatters of North America*, 73 N. J. L. 729, 65 Atl. 165, 9 L. R. A. 254.

⁴¹ *Brennan v United Hatters of North America*, 73 N. J. L. 729, 65 Atl. 165, 9 L. R. A. 254.

⁴² *Giblan v Nat'l Laborers' Union*, (1903) 2 K. B. 602, 72 L. J. K. B. 907, 89 L. T. 386.

⁴³ *Giblan v National Laborers' Union*, (1903) 2 K. B. 602, 72 L. J. K. B. 907, 89 L. T. 386.

⁴⁴ *Brennan v United Hatters of North America*, 73 N. J. L. 729, 65 Atl. 165, 9 L. R. A. N. S. 254; *Giblan v Nat'l Amalgamated Laborers' Union*, (1903) K. B. 600, 72 L. J. K. B. 907, 89 L. T. 386. (In this case it appeared that Giblan was a member of the union, and was indebted to it

in a considerable sum for moneys that had been intrusted to him as treasurer of one of its branches. In order to compel him to pay this money, the union, through two of its officers (whose acts were afterwards approved by the union), undertook to prevent and did prevent plaintiff from getting or retaining employment, by calling out or threatening to call out the men. It was held that the union and its officers were liable in damages for interfering with Giblan in the exercise of his common-law right to dispose of his labor according to his will, and that their action was not justified by the fact that it was taken for the purpose of compelling him to make good his defalcation.

⁴⁵ *Blanchard v Newark Joint District Council*, (N. J.) 71 Atl. 1131.

⁴⁶ See *Infra* Chapter IX, *Boycotts of Labor*, sections 174, 175.

charge from employment has been coerced by threats of strike, because of his refusal to pay a fine imposed without due compliance with the rules and by-laws of the union, is not affected by the fact that the union is an unlawful organization formed for the purpose of monopolizing to its members the labor market in a particular trade. His right of action does not rest upon any assertion of monopoly, but upon a repudiation of the very course of procedure invoked against him to establish the monopoly. Where a party has entered into an agreement that is void because contrary to public policy, his right to recover upon a ground of action that exists independent of the agreement is not overthrown by the operation of the maxim "*in pari delicto.*"⁴⁷ Nor does the taking of an appeal by him from the order imposing the fine amount to a waiver of damages resulting from the illegal act of procuring his discharge from employment in order to enforce payment of the fine.⁴⁸ In an action by him to recover damages, error, if any, in admitting a printed copy of the trade rules of the union, instead of requiring the secretary of the union to produce its minutes showing its by-laws, as he had been subpoenaed to do, does not harm defendants, where the illegality of the proceedings imposing the fine which the by-laws were offered to prove, had been decided in plaintiff's favor by a proper tribunal, and plaintiff reinstated to membership and the fine returned to him.⁴⁹ So in such action two letters produced by defendant on notice, one by the president of the general union and the other by its secretary each containing a notice to the local imposing the fine, of the disposition of plaintiff's appeal were competent evidence.⁵⁰

§ 44a. —Under English Trade Disputes Act of 1906.

The English Trade Disputes Act of 1906, § 3 provides that "an act done by a person in contemplation, or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment, or that it is an interference with the trade, business or employment of some other person, or with the right of some other person to dispose of his

⁴⁷ *Brennan v United Hatters of North America*, 73 N. J. L. 729, 65 Atl. 165, 9 L. R. A. N. S. 254. See also *Cone v Russell*, 48 N. J. Eq. 208, 21 Atl. 247; *Easton Nat'l Bank v American Brick and Tile Co.*, 70 N. J. Eq. 732, 64 Atl. 917.

⁴⁸ *Blanchard v Newark Joint District Council*, (N. J.) 71 Atl. 1131.

⁴⁹ *Blanchard v Newark Joint District Council*, (N. J.) 71 Atl. 1131.

⁵⁰ *Blanchard v Newark Joint District Council*, (N. J.) 71 Atl. 1131.

capital or labor as he will." This remarkable legislation being in a high degree in derogation of common right, must of course receive a strict and narrow construction. The construction of this statute came before the House of Lords in a recent case and it was unanimously held—reversing a decision of the Court of Appeal in which all the members of that court concurred,⁵¹ that one who acting as a mere intermeddler, without authority from any trade union, at the instigation of two of plaintiff's fellow workmen procures his discharge for non-payment of a fine by threats that the workmen of plaintiff's employer will be called out, unless he is discharged, is not acting "in contemplation of a trade dispute" within the meaning of the statute, nor entitled to its protection and is liable for the damages resulting from his act.⁵² It was said by Lord Loreburne that "the fact that the defendant being what he was, interfered in order to compel the plaintiff to pay the old arrears he owed, and also in order to punish him for not paying them, does not, in my view, at all establish that his interference was an act done in contemplation of a trade dispute."⁵³ By Lord Atkinson: "It is impossible to suppose, I think, that the legislature ever intended that where perfect peace prevailed in any factory or establishment, and an intruder, a mere mischief maker, actuated by greed, or some feeling of revenge, interfered, and by threats and molestation stirred up strife and disputes which neither employer nor workmen, theretofore thought of, he should be made irresponsible because of the very mischief he intended and hoped to stir up."⁵⁴ And by Lord Shaw: "The contemplation of such a dispute must be the contemplation of something impending or likely to occur and * * * they do not cover the case of coercive interference in which the interviewer may have in his own mind that if he does not get his own way he will thereupon take ways and means to bring a trade dispute into existence. 'To contemplate a trade dispute' is to have before the mind some objective event or situation with these elements of fact or probability, to which I have adverted, but does not mean a contemplation, meditation or resolve, in regard to something as yet wholly within the mind and of a subjective character." To carry the words "in contemplation or furtherance of a trade dispute" "beyond the region of a trade dispute, either actual, impending, or

⁵¹ (1908) 2 K. B. 844.

⁵³ at p. 518.

⁵² *Conway v Wade*, (1909) A. C.

⁵⁴ at p. 518.

probable, and into the region of private animosity, which may if thwarted, take the shape of bringing into being, is not a sound construction of the statute.”⁵⁵

§ 45. Strikes or the inducing of strikes to enforce payment by employer of labor of fine assessed against him by union.—Civil liability.

A labor union has no right to inflict a penalty upon one who owes them no duty through association in the membership of the union, by contract or otherwise.⁵⁶ If it could, this would be investing it with the powers of government in violation of organic law, which commits those powers exclusively to the constituted authorities of the state.⁵⁷ In the leading case on the subject it was said: “Freedom does not imply a right in one person, either alone or in combination with others, to disturb or annoy another, either directly or indirectly, in his lawful business or occupation, or to threaten him with annoyance or injury for the sake of compelling him to buy his peace.” Such acts “are peculiarly offensive to the free principles which prevail in this country; and if such practices could enjoy impunity, they would tend to establish a tyranny of irresponsible persons over labor and mechanical business which would be extremely injurious to both.”⁵⁸ It has accordingly been held that a combination by officers of a union to compel a person under the necessity of employing workmen to carry on his business, to pay a fine imposed on him by the union for not having all his work done by its members, by calling out his employes on a strike, and using the power of the union to prevent his obtaining other suitable workmen, or by threatening to do this so that he is induced to pay the fine under a reasonable apprehension that he cannot carry on his business without yielding to the illegal demand is an unlawful, if

⁵⁵ at p. 522.

⁵⁶ *Connecticut*.—*March v Bricklayers, etc. Union*, 79 Conn. 7, 63 Atl. 291, 118 Am. St. Rep. 127, 4 L. R. A. N. S. 1198.

Massachusetts.—*Carew v Rutherford*, 106 Mass. 1, 8 Am. Rep. 287.

Missouri.—*State v Dalton*, 134 Mo. App. 517, 114 S. W. 1132; *Burke v Fay*, 128 Mo. App. 690, 107 S. W. 408.

New York.—*Master Stevedores' Association v Walsh*, 2 Daly 1.

Pennsylvania.—*Patterson v Building Trades' Council*, 11 Pa. Dist. Rep. 100.

And see opinion of Sheldon J. in *L. D. Wilcutt & Sons Co. v Driscoll*, 200 Mass. 110, 85 N. E. 897.

⁵⁷ *Patterson v Building Trades' Council*, 11 Pa. Dist. Rep. 500.

⁵⁸ *Carew v Rutherford*, 106 Mass. 1, 8 Am. Rep. 287.

not criminal conspiracy, and "a species of annoyance and extortion which the common law has never tolerated."⁵⁰ So where a union imposes a fine on a manufacturer for selling his product to an employer of labor which it has declared "unfair," and through its agent demands payment from the manufacturer upon the threatened alternative, that if payment were refused by him, he would by action of the members of the union in refusing to handle his product in their work then in progress for those who had bought it, be annoyed and harrassed in the enjoyment of the benefit of the market for that product which he had obtained, and in all probability be wholly deprived of that market, and the manufacturer pays such fine, because the action thus threatened is within their power to take, the members of the union are guilty of conspiracy.⁶⁰ On either of the states of facts set out in the two preceding paragraphs of text, the party against whom the conspiracy is directed is entitled to recover back the fine,⁶¹ and also any damages resulting from the acts of the conspirators.⁶² In each instance the element of coercion is present; in the first a reasonable apprehension of injury superinduced by threats of a combination apparently having the ability to execute them, that they will put it out of the power of the party threatened to obtain the labor necessary to the carrying on of his business;⁶³ and in the second a reasonable apprehension of injury superinduced by threats of action which the combination had the power to take, which would necessarily result in his being deprived of a market for his product.⁶⁴ By no stretch of the imagination can a payment made under these circumstances be deemed voluntary. Nevertheless, to entitle an employer to recover back a fine assessed against him by a labor union and paid by him in order to get back his employes who were called out by officers of the union for the purpose of compelling him to pay the fine, it should appear that the

⁵⁰ *Carew v Rutherford*, 106 Mass. 1, 8 Am. Rep. 287. See also as clearly sustaining this doctrine *Burke v Fay*, 128 Mo. App. 690, 107 S. W. 408.

⁶⁰ *March v Bricklayers' etc. Union*, 79 Conn. 7, 63 Atl. 291, 118 Am. St. Rep. 127, 4 L. R. A. N. S. 1198.

⁶¹ *March v Bricklayers' etc. Union*, 79 Conn. 7, 63 Atl. 291, 118 Am. St. Rep. 127, 4 L. R. A. N. S. 1198; *Carew v Rutherford*, 106 Mass. 1, 8 Am.

Rep. 287; And see *Burke v Fay*, 128 Mo. App. 690, 107 S. W. 408; *State v Dalton*, 134 Mo. App. 517, 114 S. W. 1132.

⁶² *Carew v Rutherford*, 106 Mass. 1, 8 Am. Rep. 287.

⁶³ *Carew v Rutherford*, 106 Mass. 1, 8 Am. Rep. 287.

⁶⁴ *March v Bricklayers' etc. Union*, 79 Conn. 7, 63 Atl. 291, 118 Am. St. Rep. 117, 4 L. R. A. N. S. 1198.

only alternative to a refusal to pay the fine was injury to his business. If he could have obtained other workmen to do his work, the payment would have to be deemed voluntary and could not be recovered.⁶⁶ Acts of the nature considered in paragraph 60 in this section, it has been held are not justifiable as being in the exercise of fair trade competition. If it be considered that the plaintiff and the defendants "are to be regarded as trade competitors, so that the recognized doctrines applicable to such competitors are applicable to them," it yet remains that the means resorted to would not be permitted.⁶⁸ Nor can such acts be justified on the theory "that money demanded and obtained as the price of forbearance from the commission of an act of injury, even when the commission of that act is held over the man to coerce and intimidate him into compliance with the demand, is lawfully obtained, if the threatened act was one which the threatener might lawfully do. "Such a proposition," it was said, "could often times be used to justify the vilest blackmailer, and is palpably unsound, in that it ignores certain elements which may be present to convert the proceeding into a wrong or a crime."⁶⁷ An action of tort (case) is a proper form of action to recover back a fine illegally extorted, and damages sustained through the unlawful acts of defendants in preventing plaintiff from obtaining the labor necessary to the execution of his contracts as a means of compelling him to pay the fine,⁶⁸ and it has been said that a fine so extorted can be recovered back in an action as for money had and received,⁶⁹ which lies whenever one person obtains the money of another which it is inequitable and unjust for him to retain.⁷⁰

§ 46. —Criminal liability.⁷¹

A combination by members or officers of a union to induce one's employes to quit his service, and not to go back to work for him, and

⁶⁶ *Burke v Fay*, 128 Mo. App. 690, 107 S. W. 408.

⁶⁷ *March v Bricklayers' etc. Union*, 79 Conn. 7, 63 Atl. 291, 118 Am. St. Rep. 127, 4 L. R. A. N. S. 1198.

⁶⁸ *March v Bricklayers' etc. Union*, 79 Conn. 7, 63 Atl. 291, 118 Am. St. Rep. 127, 4 L. R. A. N. S. 1198.

⁶⁹ *Carew v Rutherford*, 106 Mass. 1, 8 Am. Rep. 287; and see *State v Dal-*

ton, 134 Mo. App. 517, 114 S. W. 1133.

⁶⁹ See *Burke v Fay*, 128 Mo. App. 690, 107 S. W. 408.

⁷⁰ *Money had and Received* 27 Cyc. p. 894, and cases cited; *Clifford Banking Co. v Donovan Com. Co.*, 195 Mo. 262, 94 S. W. 927.

⁷¹ For form of indictment for conspiracy to extort money by preventing

to induce others willing to enter his service not to do so, until he has paid a fine imposed on him, and the carrying out of the purposes of the combination renders the members thereof liable to a prosecution for criminal conspiracy.⁷² And where a union imposes a fine on a manufacturer for selling his product to an employer of labor which it has declared "unfair," and through its agent demands payment from the manufacturer upon the threatened alternative that if payment were refused by him, he would, by action of the members of the union in refusing to handle his product in their work then in progress for those who had bought it be annoyed and harrassed in the enjoyment of the benefit of the market for that product which he had obtained, and in all probability be wholly deprived of that market, and the manufacturer pays such fine because the action thus threatened is within their power to take, the members of the union who are parties to the combination are guilty of a violation of a statute making it a criminal offense to threaten or use any means to intimidate any person, to compel him against his will to do or abstain from doing any act which he has a legal right to do; or injure or threaten to injure his property with intent to intimidate him.⁷³ As regards pleadings, in prosecutions for acts of this character, it has been held that an information which alleges that defendants conspired to extort money from prosecutor by inducing his employes to leave his service, and to induce other workmen willing to enter his service not to do so, until he had paid the money which the combination sought to extort from him, and the execution of such conspiracy resulting in the payment of the money by prosecutor, charges an offense at common law as modified by a statute requiring the commission of some overt act in case of conspiracies other than those to commit a felony upon the person of another.⁷⁴

§ 47. Strikes to enforce payment by employer of labor of fines assessed by union against member.

A strike is unlawful and subjects those joining it to civil liability

employer from obtaining the labor necessary to the carrying on of his business see Appendix form No. 1.

⁷² State v Dalton, 134 Mo. App. 517 114 S. W. 1132.

⁷³ March v Bricklayers' etc. Union, 79 Conn. 7, 63 Atl. 291, 118 Am. St. Rep. 127, 4 L. R. A. N. S. 1198.

⁷⁴ State v Dalton, 134 Mo. App. 517, 114 S. W. 1132.

where its purpose is to compel an employer to pay a fine due the union from one of its members.⁷⁵

§ 48. Strikes to procure discharge of workmen in breach of contract of employment.

Strikes or threats of strike whereby an employer is induced to discharge an employe in breach of contract is unlawful and the employe is entitled to recover the damages resulting therefrom, from those whose wrongful acts caused the discharge.⁷⁶ And it has been held that the act is not justified by the fact that such contract of employment was made in breach of contract between the employer and the union threatening the strike, that the employer should hire only union men.⁷⁷

§ 49. Strikes to compel employers to submit disputes with individual employes to council of union officers.

In a decision of the Supreme Court of Massachusetts, which has attracted considerable attention, an injunction was awarded against the commission of any acts in furtherance of a strike which the court held unlawful as an unjustifiable interference with the business of the employer. The occasion of the strike was the posting of "open shop" rules by the employer, and was against working under those rules. Certain rules of the union provided that every grievance which a member of the union had against his employer should be investigated by a board composed of officers of the union, and in case the employer failed to comply with the demands of the board he should be reported to the union as "unfair"; on being reported "unfair" the board should interview him again and if he still refused to comply with the demands of the union the board "shall at once remove all union men from his employ," and "no union man shall be allowed to go to work" for him "until he is again placed upon the fair list." One of the purposes of the strike being to uphold these rules, the strike was declared illegal for that reason. In the view of the majority of the court, the rules in effect made a

⁷⁵ *Hillenbrand v Building Trades' Council*, 14 Ohio Dec. N. P. 628.

⁷⁶ *Read v. Friendly Society of Operative Stone Masons*, L. R., (1902) 2 K. B. 732, 71 L. J. K. B. 994, 87 L. T. 493. And see *Com. v Hunt*, 4 Met. (Mass.) 346, 38 Am. Dec. 346; and

Infra Chapter XVI, *Procuring Breach of Contract*.

⁷⁷ *Read v Friendly Society of Operative Stone Masons*, L. R. (1902) 2 K. B. 732, 71 L. J. K. B. 994, 87 L. T. 493.

board composed of members of the union the arbiters of all questions between individual employes and their employer, and it was held that a combination the purpose of which was to enforce by a strike the submission of such questions to the board was unlawful. The decision of the court is proper if the construction placed on the rules is correct, but it is not believed that they are susceptible of any such construction. In his dissenting opinion, Chief Justice Knowlton says: "There must be a method of determining what action, if any, shall be taken by the union in case of an alleged grievance and such determination cannot properly be made without an investigation of the facts. Such investigation, ordinarily would involve conferences with the employer and negotiations to see whether he would consent to an improvement of the conditions, if they should appear to be unjust to the employe. Such conferences and negotiations, without which, ordinarily no union would be justified in striking, call for a representative or representatives of the union to present its side of the controversy to the employer and to act for the union in the maintenance of its interests against the opposite party. The course of procedure outlined by these rules is entirely for the guidance of the members of the union. The employer takes such measures, and acts upon such principles as he chooses for his own guidance. If the result is a failure to agree, then each stands upon his rights, and it is a question which can force the other to yield, or how they can afterwards reach a compromise. The board of officers is no more the arbiter of the questions between the individual employes and their employer than the employer is. The board as a representative official board, decides for one party and determining its action and the employer decides for the other party and determines his action. Neither assumes to determine anything for the other, but the action of each is governed by its own determination."⁷⁸

§ 50. Strikes in breach of contract of employment.

Strikes in breach of contract of employment are unlawful,⁷⁹ and according to an eminent commentator on the law of crimes, are

⁷⁸ Reynolds v Davis, 194 Mass. 294, N. E. 457, 17 L. R. A. N. S. 162; 78 N. E. 457, 17 L. R. A. N. S. 162.

⁷⁹ State v Stockford, 77 Conn. 227, 72; Wabash R. Co. v Hannahan, 121 58 Atl. 769, 107 Am. St. Rep. 28; Fed. 563. And see United States v Reynolds v Davis, 198 Mass. 294, 84 Haggerty, 116 Fed. 510; Mapstrick

criminal conspiracies.⁸⁰ In case of persons under contract to work, a strike or combination not to work, in violation of that contract, to secure something not due to them under that contract, would be a combination interfering without justification with the employer's business.⁸¹

§ 50a. Inciting strikes in violation of statute providing for reference of disputes to boards of conciliation and investigation.

The Canadian Industrial Disputes Act of 1907, among other things contains the following provisions: Section 5 provides for a reference of disputes to boards of conciliation and investigation. Section 56 declares that "it shall be unlawful for any employer to declare or cause a lockout or for any employe to go on strike, on account of any dispute prior to or during a reference of such dispute to a board of conciliation. By section 2, sub-section (e) "dispute" is defined to mean any dispute or difference between an employer and one or more of his employes, as to matters or things affecting or relating to work done or to be done by him or them, and includes all matters relating to wages, hours of employment, etc. By section 2, sub-section (g) "strike" is defined as the cessation of work by a body of employes acting in combination, in consequence of a dispute, done as a means of compelling their employer to accept terms of employment, and section 60 provides that any person who incites, encourages or aids in any manner any employer to declare or continue a lockout, or any employe to go or continue on strike, contrary to the provisions of this act, shall be guilty of an offense, and liable to a fine of not less than \$50 or more than \$1,000. In construing these provisions it was held that one who incited a strike of mine-workers was guilty of a violation of the statute, though there had been no application by either employer or employes for a reference to a board of conciliation prior to the act of inciting the strike.⁸²

§ 51. Strikes as an instrumentality for enforcing boycotts.

While the decisions are not entirely harmonious, the great weight

v Range, 9 Neb. 390; 2 N. W. 739, 31 Am. Rep. 315; Branch v Roth, 10 Ont. L. (Can.) 284.

⁸⁰ Bishop's New Criminal Law, 233.

⁸¹ Reynolds v Davis, 198 Mass. 294, 84 N. E. 457, 17 L. R. A. N. S. 162.

See also Com. v Hunt, 4 Met. (Mass.) 111, 38 Am. Dec. 346.

⁸² King v McGuire, 13 Can. Cr. Cas. 312.

⁸³ See *Infra*, Chapter VII, *Boycotts of Capital, and Substantive Law Re-*

of authority is to the effect that organized labor's right of coercion and compulsion by strikes or threats of strikes is limited to strikes or threats of strikes against persons with whom the combination has a trade dispute; or stating this proposition in other words, a strike or threats of strike against one with whom the organization has no dispute for the purpose of forcing him to compel another person with whom it has a dispute to comply with demands made on him by the organization, is an unjustifiable interference with the right of the party against whom the strike is declared or threatened, and is likewise an unjustifiable interference with the business of the party whom it is thus sought to coerce into compliance with the demand of the combination. Especially is this true where the purpose of the combination is to force the person against whom the strike is declared or threatened, to break a contract with the person whom the combination seeks to force into a compliance with its demands.⁸⁴ And if these demands are that non-union men be discharged from employment, there is an unjustifiable interference with their rights.⁸⁵ An action lies in favor of the party injured by such acts for the recovery of the damages sustained,⁸⁶ and in case of irreparable injury he also has a right to an injunction.⁸⁷ So, in the absence of some statute providing otherwise the members of the combination are punishable as for a criminal conspiracy.⁸⁸ From the standpoint of logical classification, all of the propositions briefly outlined here are more properly a part of the law of boycotts than of strikes, and as is indicated by the numerous cross-references given in the notes to this section will be considered in detail in the chapters relating to boycotts.

§ 52. Injunctions to prevent workmen from striking.

It is a rule of long settled standing that courts of equity will not by injunction prevent one individual from quitting the personal

lating Thereto, sections 77, 80, 81, 93, 101, 102, 104, 105.

⁸⁴ See *Infra* Chapter VII, *Boycotts Relating Thereto*, sections 81, 93, 105.

⁸⁵ See *Infra* Chapter IX, *Boycotts of Labor*, sections 133, 134, 139.

⁸⁶ See *Infra* Chapter VII, *Boycotts of Capital, and Substantive Law Relating Thereto*, section 93; Chapter IX, *Boy-*

cotts of Labor, sections 143, 144.

⁸⁷ See *Infra* Chapter VII, *Boycotts of Capital, and Substantive Law Relating Thereto*, sections 101, 102, 104, 105; Chapter IX, *Boycotts of Labor*, section 142.

⁸⁸ See *Infra* Chapter VII, *Boycotts of Labor, and Substantive Law Relating Thereto*, section 91.

service of another.* No matter how inadequate the remedy at law, the arm of a court of equity cannot be extended by mandatory injunction to compel the enforcement of personal service as against either the employer or his employee.* It would be impracticable to

* *Arthur v Oakes*, 83 Fed. 310, 11 C. C. A. 209, 25 L. R. A. 414, 4 Inters. Com. 744. See also dicta in *Clemmit v Watson*, 14 Ind. App. 38, 42 N. E. 367; *Alfred W. Booth & Bro. v Burgess*, 72 N. J. Eq. 181, 65 Atl. 226, 231; *Knudsen v Benn*, 123 Fed. 637; *Beers v Wabash, etc. R. Co.*, 34 Fed. 244, And see cases cited in the reading note which follows.

Arguments advanced in support of doctrine by Justice Harlan. In *Arthur v Oakes*, *supra* Justice Harlan said: "One who is placed under such constraint is in a condition of involuntary servitude—a condition which the supreme law of the land declares shall not exist within the United States or in any place subject to their jurisdiction. Courts of equity have sometimes sought to sustain a contract of services requiring special knowledge or peculiar skill by enjoining acts that would constitute a breach of such contract. To this class belongs the case of singers, actors, or musicians, who after agreeing for a valuable consideration to give their professional services at a named place and during a specified time for the benefit of certain parties refuse to meet their engagement and undertake to appear during the same period for the benefit of other parties at another place (*Lumley v Wagner*, 1 De Gex M. & G. 604, 617, *id.* 5 De Gex & S. 485, 16 Jur. 871; *Montagne v Stockton*, L. R. 16 Eq. 189). While in such cases, the singer, actor, or musician has been enjoined from appearing during the period named at a place and for par-

ties different from those specified in his first engagement it was never supposed that the court could by injunction compel the affirmative performance of the agreement to sing or to act or to play * * * The rule we think is without exception that equity will not compel the actual affirmative performance by an employe of merely personal services, any more than it will compel an employer to retain in his personal service one who no matter for what cause is not acceptable to him for service of that character. The right of an employe engaged to perform personal service to quit that service rests upon the same basis as the right of his employer to discharge him from further personal service. If quitting in the one case or the discharging in the other is a violation of the contract between the parties the one injured by the breach has his action for damages; and a court of equity will not indirectly or negatively by means of an injunction restraining the violation of the contract compel the affirmative performance from day to day or the affirmative acceptance of merely personal services. Relief of that character has always been regarded as impracticable."

* *Toledo, etc. R. Co. v Pennsylvania Co.* 54 Fed. 746; *Union Pacific R. Co. v Ruef*, 120 Fed. 102. And see *Stockler v Brockelbank*, 3 Mac N. & G. 250; *Johnson v R. Co.*, 13 DeGex M. & G. 914; *Lumley v Wagner*, 1 DeGex M. & G. 604, 5 DeGex & S. 485, 16 Jur. 871; *Pickering v Bishop*, 2 Young & C. Ch. 249.

enforce the relation of master and servant against the will of either,²¹ and an invasion of one's natural liberty to compel him to work for or to remain in the personal service of another.²² With the exception of one decision which was subsequently modified on appeal and which provoked a great deal of adverse criticism both in this country and England,²³ it has been uniformly held in accordance with the elementary doctrine enunciated, that courts have no power to enjoin workmen from withdrawing from the service of their employer, in a body,²⁴ and it is immaterial that such with-

²¹ Toledo, etc. R. Co. v Pennsylvania Co., 54 Fed. 730, 743, 19 L. R. A. 387, 5 Inters. Com. Rep. 522, in which it was further said: "Especially is this true in the case of railway engineers where nothing but the most painstaking and devoted attention on the part of the employe will secure a proper discharge of his responsible duties; and it would even seem to be against public policy to expose the lives and the property of the traveling public to the danger which might arise from the enforced and unwilling performance of so delicate service."

²² Arthur v Oakes, 63 Fed. 310, 311, 11 C. C. A. 209, 25 L. R. A. 414, 4 Inters. Com. 744; Union Pacific R. Co. v Ruef, 120 Fed. 102, in which it was said that if contracts for personal service could be enforced, "then a person could sell himself into servitude for a period of years, or even for life, and in whole or in part lose dominion over himself; and this is so abhorrent that courts will not recognize such contracts."

²³ Farmers' Loan & Trust Co. v Northern Pac. R. Co., 60 Fed. 803 (decree modified on appeal in 63 Fed. 310, 11 C. C. A. 209.)

²⁴ Arthur v Oakes, 63 Fed. 310, 11 C. C. A. 209, 25 L. R. A. 414, 4 Inters. Com. 744, (modifying an injunction granted by Judge Jenkins in Farmers' Loan & Trust Co. v Northern Pacific R.

Co., 60 Fed. 803, in so far as it enjoined the employes of the railroad company from quitting service in a body. The clause modified enjoined defendants "from combining and conspiring to quit, with or without notice the service of said receivers with the object and intent of crippling the property in their custody or embarrassing the operation of said railroad, and from so quitting the service of the said receivers with or without notice, so as to cripple the property, or prevent or hinder the operation of the road (italics are ours). This clause was modified by striking out the part here italicised. The court considered that "the general inhibition against combinations, and conspiracies formed with the object and intent of crippling the property and embarrassing the operation of the railroad must be construed as referring only to acts of violence, intimidation, and wrong of the same nature, or class as those described in the previous clauses of the writ. We do not interpret the words last above quoted as embracing the case of employes who being dissatisfied with the proposed reduction merely withdraw on that account, singly or by concerted action from the service of the receivers, using neither force threats, persecution, nor intimidation towards employes who do not join them, nor any device to molest, hinder,

drawal involves a breach of contract to work for a definite period of time rendering those withdrawing liable in damages to the party injured,⁹⁵ or to a criminal prosecution.⁹⁶ Nor is a departure from the rule justified by the fact that the employes sought to be enjoined are in the service of a receiver or a quasi public corporation, or that they may quit under circumstances that would show bad faith upon their part or a reckless disregard of their contract, or of the convenience and interests of both employer and the public.⁹⁷ In the celebrated case of *Arthur v Oakes*,⁹⁸ which arose in the great railroad strike of 1894, it was contended that the doctrine was inapplicable, or should not be applied in the case of employes of a railroad company, which under legislative sanction, constructs and maintains a public highway, primarily for the convenience of the people, and in the regular operation of which the public are vitally interested. Justice Harlan disposed of this contention as follows: "Undoubtedly, the simultaneous cessation of work by any considerable number of the employes of a railroad corporation without previous notice will have an injurious effect, and for a time inconvenience the public. But these evils, great as they are, and although arising in many cases from the inconsiderate conduct of employes and employers both equally indifferent to the general welfare, are to be met and

alarm or interfere with others who take or desire to take their places"; *Mills v United States Printing Co.*, 91 N. Y. Suppl. 185, 99 App. Div. 635; *A. R. Barnes & Co. v Berry*, 156 Fed. 72; *Union Pac. R. Co. v Ruef*, 120 Fed. 102; *Toledo, etc. R. Co. v Pennsylvania Co.*, 54 Fed. 730, 19 L. R. A. 387, 5 Inters. Com. Rep. 522. And see *Jetton-Dehkle Lumber Co. v Mather*, 53 Fla. 969, 43 So. 590; *J. F. Parkinson Co. v Building Trades' Council*, 154 Cal. 581, 98 Pac. 1027, 21 L. R. A. N. S. 550; *Lohse Patent Door Co. v Fuelle*, 215 Mo. 421, 114 S. W. 997, 22 L. R. A. N. S. 607; *Gray v Building Trades' Council*, 91 Minn. 171, 97 N. W. 663, 103 Am. St. Rep. 477, 63 L. R. A. 753; *Alfred W. Booth & Co. v Burgess*, 72 N. J. Eq. 181, 65 Atl. 226, 231, in which

it was said an injunction to compel a number of men to go to work would be contrary to a well-settled rule and would be a judicial curiosity; *Goldfield Consolidated Mines Co. v Goldfield Miners' Union*, 159 Fed. 500; *Delaware, etc. R. Co. v Switchmen's Union*, 158 Fed. 541.

⁹⁵ *Arthur v Oakes*, 83 Fed. 310, 11 C. C. A. 209, 25 L. R. A. N. S. 414, 4 Inters. Com. Rep. 744; *Delaware, etc. R. Co. v Switchmen's Union*, 158 Fed. 541.

⁹⁶ *Toledo, etc. R. Co. v Pennsylvania Co.* 54 Fed. 730, 743, 19 L. R. A. 387, 5 Inters. Com. Rep. 522.

⁹⁷ *Arthur v Oakes*, 83 Fed. 310, 11 C. C. A. 209, 25 L. R. A. 414, 4 Inters. Com. Rep. 744.

⁹⁸ 83 Fed. 310, 11 C. C. A. 209, 25 L. R. A. 414, 4 Inters. Com. Rep. 744.

remedied by legislation restraining alike employes and employers, so far as necessary adequately to guard the rights of the public as involved in the existence, maintenance, and safe management of public highways. In the absence of legislation to the contrary, the right of one in the service of a quasi public corporation to withdraw therefrom at such time as he sees fit, and the right of the managers of such corporation to discharge an employe from service whenever they see fit, must be deemed so far absolute that no court of equity will compel him, against his will, to remain in such service or actually to perform the personal acts required in such employments or compel such managers, against their will to keep a particular employe in their service."

§ 53. Injunctions to compel performance of services by employes who elect to remain in the service.

No man has a legal or moral right, while continuing in the employment of another, to refuse to do the work he is employed and engaged to do," and while a court of equity as heretofore shown has no power to compel employes to continue in the service of the employer,¹ yet if the employes elect to remain in the service, performance of the duties incident thereto may be compelled by injunction. In *Southern R. Co. v Rutherford*,² it appeared that the employes of complainant, a railroad company engaged in the transportation of interstate commerce and the mails, although remaining in the employ of the complainant, refused to handle or operate any train of cars of complainant to which a Pullman car was attached. It further appeared that such refusal subjected complainant to a multiplicity of suits and to great and irreparable damage, in that there was a contract requiring complainant to attach a Pullman car or cars on all of its through trains for the carriage of passengers and the mail and also retarded and interrupted complainant in the transmission of mail and interstate commerce. An injunction requiring the employes to perform their duties during their continuance in complainant's employment was issued as prayed. In *Toledo, etc. R. Co. v Pennsylvania Co.*,³ it was held that a mandatory injunction might be issued against several railroad companies and their employes, at the instance of another railroad company, enjoining

¹ In *Re Grand Jury*, 62 Fed. 834, 835.

² 62 Fed. 796.

³ 54 Fed. 730, 19 L. R. A. 387, 5 Inters. Com. Rep. 522.

¹ See the preceding section.

defendant railroad companies, and their employes from refusing to receive and deliver complainant's interstate freight. The court (by Judge Taft) said that the injunction did not amount to an enforced specific performance of personal service by the employes; that it was only an order restraining them *if they assumed to do the work of the defendant companies from doing it in a way which would violate not only the rights of complainant but also the order of the court made against their employees to preserve their rights*; that they might avoid obedience to the injunction by actually ceasing to be employes of the companies. In a subsequent proceeding to punish for contempt in violating the injunction so awarded, it appeared that an engineer who had notice of the injunction, during the course of his run disobeyed orders of his employers to attach to his train a car of the boycotted company, and said "I quit." He nevertheless remained with the engine for five hours and on notice from his union that he might handle the car, promptly attached it to his train which he brought to its destination. On these facts it was held that he had not quit the service in good faith; that his conduct was a trick to avoid obeying the order of the court and that he was punishable for contempt for violating the order. The decree was affirmed by the Circuit Court of Appeals,⁴ and the decree of that court was affirmed by the Supreme Court of the United States.⁵

§ 54. Injunctions to restrain officers of unions from inducing or consenting to strikes.—Where strike is lawful.

While it is well settled that courts of equity are without power to enjoin workmen individually or collectively from stopping work,⁶ the question frequently arises, whether the courts have power to grant an injunction restraining officers of a union from calling or consenting to strikes and if so under what circumstances such injunctions will issue. Now it may be stated at the outset, that according to well-settled principles, members of a union have the right to appoint officers who shall advise them as to the course to be taken by them in regard to their relations with their employers.⁷ This right of choosing leaders is no greater pretention than that which is recognized in every other department of industry,⁸ and the officers

⁴ 22 U. S. App. 561.

⁶ Ex parte Lennon, 166 U. S. 548, 17 Sup. Ct. 658, 41 L. ed. 1110.

⁸ See *Supra* this chapter, section 52.

⁷ Thomas v Cincinnati, etc. R. Co. 62 Fed. 803, 817, 4 Inters. Com. Rep. 788; In Re Grand Jury, 62 Fed. 828.

⁸ In Re Grand Jury, 62 Fed. 828.

so appointed, may, if such authority has been vested in them, order the members to strike because the terms of the employment are unsatisfactory.⁹ The rule deducible from all the authorities—and no other is possible from any point of view,—is that courts have no power to enjoin officers vested with the requisite authority and acting in good faith from calling a lawful strike by the members of the union which they represent, that is to say a strike the object of which the law regards as lawful, and which involves no breach of contract on the part of those called out.¹⁰ This rule is in no way restricted or limited by the fact that the strike might incidentally interrupt the passage of the mails,¹¹ or the transportation of interstate commerce,¹² or by the fact that the employer is a receiver managing property under the direction of the court.¹³ And according to the weight of authority and reason also, the rule applies with full force and effect, though such coercion and compulsion as is incidental to the imposition of or threats, express or implied, to impose penalties is made use of for the purpose of compelling recalcitrant members to join the strike.¹⁴ Especially should the rule not be denied or restricted where it is shown that the members have voted to strike and that under the constitution and by-laws of the union, no strike can

⁹ *Thomas v Cincinnati, etc. R. Co.*, 62 Fed. 803, 4 Inters. Com. Rep. 788; and see *J. F. Parkinson Co. v Building Trades' Council*, 154 Cal. 581, 98 Pac. 1027, 21 L. R. A. N. S. 550.

¹⁰ *Florida*.—*Jetton-Dehkle Lumber Co. v Mather*, 53 Fla. 969, 43 So. 490.

Minnesota.—*Gray v Building Trades' Council*, 91 Minn. 171, 97 N. W. 663, 103 Am. St. Rep. 477, 63 L. R. A. 763.

New York.—*Nat'l Protective Association v Cumming*, 65 N. Y. Suppl. 946, 53 App. Div. 227, (affirmed in 170 N. Y. 315, 63 N. E. 369, 88 Am. St. Rep. 648, 58 L. R. A. 135).

Oregon.—*Longshore Printing & Publishing Co. v Howell*, 26 Ore. 527, 38 Pac. 547, 46 Am. St. Rep. 640, 28 L. R. A. 464.

United States.—*A. R. Barnes & Co. v Berry*, 157 Fed. 883; *Wabash, etc.*

R. Co. v Hannahan, 121 Fed. 563; *Thomas v Cincinnati, etc. R. Co.*, 62 Fed. 803, 4 Inters. Com. Rep. 788; *In Re Grand Jury*, 62 Fed. 828.

And see as sustaining this view, *State v Dalton*, 134 Mo. App. 517, 114 S. W. 1132; *J. F. Parkinson Co. v Building Trades' Council*, 154 Cal. 581, 98 Pac. 1027, 21 L. R. A. N. S. 550.

¹¹ *In Re Grand Jury*, 62 Fed. 628.

¹² See *Thomas v Cincinnati, etc. R. Co.*, 62 Fed. 803, 817, 4 Inters. Com. Rep. 788; *Wabash, etc. R. Co. v Hannahan*, 121 Fed. 563.

¹³ See *Thomas v Cincinnati, etc. R. Co.*, 62 Fed. 803, 817, 4 Inters. Com. Rep. 788.

¹⁴ See *Infra* Chapter XI, *Exercise by Union of Disciplinary Measures Against Its Members as Affecting Rights of Third Parties*, sections 148, 149.

be declared without the sanction of the officers. To enjoin them from ordering or otherwise causing a strike under these circumstances would be, in substance and effect, an injunction against resort to a strike by employes who are members of the order for the redress of asserted grievances and this under well-settled rules of law cannot be done.¹⁵ In applying these principles, it has been held that if no breach of contract on the part of the members of a union is involved by a strike, its officers will not be enjoined from ordering them to strike where the object is to restore to its original status a scale of wages which had been reduced,¹⁶ or to secure an increase of wages and changes in the rules of work,¹⁷ or to secure terms of employment the maintenance of which has become the established policy of the union;¹⁸ or to secure the discharge from employment of persons not members and to secure the places so vacated for members of the union,¹⁹ or to secure the employment of efficient and careful fellow-workmen.²⁰

§ 55. —Where strike is unlawful.—General rule.

Cases in which injunctions to prevent the calling of strikes are allowable will now be considered. Although a combination of workmen cannot be enjoined from striking no matter how reprehensible and unlawful their conduct in so doing may be, it does not follow that officers of a union cannot be enjoined from calling a strike of its members.²¹ Briefly stated the rule is that officers of a union may be restrained from ordering a strike by its members, where their compliance with the order would constitute a breach of their contracts of employment,²² or where the object to be attained

¹⁵ *Wabash R. Co. v Hannahan*, 121 Fed. 563.

¹⁶ *Thomas v Cincinnati, etc. R. Co.*, 62 Fed. 803, 4 Inters. Com. Rep. 788.

¹⁷ *Wabash R. Co. v Hannahan*, 121 Fed. 563.

¹⁸ *A. R. Barnes & Co. v Berry*, 157 Fed. 883.

¹⁹ *Nat'l Protective Ass'n v Cumming*, 65 N. Y. Suppl. 946, 63 App. Div. 227 (affirmed in 170 N. Y. 315, 63 N. E. 369, 88 Am. St. Rep. 648, 58 L. R. A. 135); *Tallman v Gaillard*, 57 N. Y. Suppl. 419, 27 Misc. 114; *Pickett v Walsh*, 192 Mass. 572, 78

N. E. 753, 46 Am. St. Rep. 272, 6 L. R. A. N. S. 106; *Jetton-Dehkle Lumber Co. v Mather*, 53 Fla. 969, 43 So. 490.

²⁰ See *Nat'l Protective Ass'n v Cumming*, 170 N. Y. 315, 63 N. E. 369, 88 Am. St. Rep. 648, 58 L. R. A. 135.

²¹ See *Toledo, etc. R. Co. v Pennsylvania Co.*, 54 Fed. 730, 19 L. R. A. 387, 5 Inters. Com. Rep. 522, and cases cited in subsequent notes in this section.

²² *A. R. Barnes & Co. v Berry*, 156 Fed. 72; *Wabash R. Co. v Hannahan*,

by the strike is unlawful.²³ The general rule that officers of a union may be enjoined from calling a strike, the object of which is unlawful has been applied where the object of the strike was to force workmen against their will to join the union,²⁴ or to gratify the personal ambition or malice of the officers, and not to further the interests of the members of the union,²⁵ or to coerce persons against whom the strike is threatened or put into operation into withholding their patronage from,²⁶ or to break contracts with,²⁷ some person with whom the union has a trade dispute, or who has incurred its enmity or displeasure.

§ 56. — — Exceptions to rule.

The rule stated in the preceding section is, however, subject to a very important exception. Where the members of a union have, in accordance with their constitution decided on a strike, and under

121 Fed. 563, in which it was held that a combination by officers of unions composed of railroad employes to compel recognition of their organizations, and the employment of union men only by inciting strikes in breach of contract by employes of a railroad company who are not dissatisfied with the terms of their employment, and to incite and induce the employes of connecting lines to refuse to interchange traffic with such company or to afford facilities therefor in order to prevent such company from carrying on its business of interstate transportation, is an unlawful conspiracy and on a bill filed by the railroad company alleging these facts, a temporary restraining order will be granted, commanding defendants to refrain from calling a strike of complainants employes and from in any other manner interfering with complainant in the discharge of its duties as a carrier of interstate traffic, until the hearing of an order to show cause why the order should not be modified or dissolved. And see Delaware, etc. R. Co. v Switchmens' Union, 158 Fed. 141; Branch

v Roth, 10 Ont. Law (Can.) 284.

²³ Alfred W. Booth & Bro. v Burgess, 72 N. J. Eq. 181, 65 Atl. 226; Beatty v Callanan, 81 N. Y. Suppl. 413, 82 App. Div. 7; Coons v Christie, 53 N. Y. Suppl. 668, 24 Misc. 296; Purvis v United Brotherhood of Carpenters and Joiners, 214 Pa. St. 349, 63 Atl. 585, 112 Am. St. Rep. 272, 12 L. R. A. N. S. 242; Erdman v Mitchell, 207 Pa. St. 79, 56 Atl. 327, 99 Am. St. Rep. 783, 63 L. R. A. 534; Wabash R. Co. v Hannahan, 121 Fed. 563; Thomas v Cincinnati, etc. R. Co. 62 Fed. 803, 4 Inters. Com. Rep. 788.

²⁴ Erdman v Mitchell, 207 Pa. St. 79, 56 Atl. 327, 99 Am. St. Rep. 783, 63 L. R. A. 534.

²⁵ See In Re Charge to Grand Jury, 62 Fed. 828.

²⁶ Alfred W. Booth & Bro. v Burgess, 72 N. J. Eq. 181, 65 Atl. 226; Purvis v United Brotherhood of Carpenters and Joiners, 214 Pa. St. 349, 63 Atl. 585, 112 Am. St. Rep. 272, 12 L. R. A. N. S. 242.

²⁷ Thomas v Cincinnati, etc. R. Co., 62 Fed. 803, 4 Inters. Com. Rep. 788; Beatty v Callanan, 81 N. Y. Suppl. 413, 82 App. Div. 7.

the constitution and by-laws the consent of a designated officer must be obtained before the decision to strike can be carried into effect, no power resides in the courts to enjoin him from giving his consent to a strike even though it be unlawful. It has been so held in regard to a strike unlawful because in breach of a contract of employment by those joining therein.²⁸ This decision is correct for obvious reasons, since workmen cannot be enjoined from striking however unlawful their conduct in so doing may be, and if under the constitution and by-laws of the union, the consent of an officer to a strike agreed on by the members is necessary before the strike can be put in operation, an injunction restraining the officer from giving his consent is for all practical purposes an injunction forbidding the members to strike. Clearly some other remedy than a writ of injunction must be sought in cases of this kind. In the case where this exception was applied, it was further declared that even assuming that the poll was directed by the union and its officers, it cannot be held as matter of law, in the absence of satisfactory evidence of a combination or conspiracy to break a valid contract, that such acts on their part, standing alone "presume unlawful incitement, persuasion or coercion of the members of the union to engage in an illegal strike."²⁹

§ 57. Injunctions to restrain intermeddlers from procuring strikes.

When necessary to prevent irreparable injury, an injunction will be granted to prevent third persons having no connection with employer or employes, and no interest in the relations existing between them, from inciting or coercing strikes among employes who are not dissatisfied with the terms of their employment and are not seeking an increase of wages.³⁰ This rule was applied to the following state of facts. A general strike involving a large number of persons, was in force among the miners in the Anthracite regions of Pennsylvania, and the chief officer of the United Mine Workers of America, for the purpose of aiding this strike, and to prevent the shipment of coal from West Virginia to localities theretofore supplied by the anthracite regions of Pennsylvania, sent a

²⁸ Delaware, etc. R. Co. v Switchmen's Union of North America, 158 Fed. 541.

²⁹ Delaware, etc. R. Co. v Switchmen's Union of North America, 158

Fed. 541.

³⁰ United States v Haggerty, 116 Fed. 510. And see Old Dominion Steamship Co. v McKenna, 30 Fed. 48.

large number of "walking delegates," "organizers," and "agitators" so called, all of whom were non-residents of West Virginia, into that state, in order to create strikes in its coal regions. To effect this purpose these persons made inflammatory speeches to complainant company's miners, who were satisfied with the terms of their employment, and advised them to quit work, and after procuring some of the miners to strike, incited them to use force and intimidation to cause others to quit work. The result of the acts so caused tended to prevent those who remained at work from continuing to do so and an injunction restraining the "walking delegates," organizers," and "agitators," from a continuance of their activities along these lines was granted.³¹

§ 58. Operation of strike to terminate relation of employer and employe.

Where employes strike the relation of master and servant is terminated absolutely³²—as much so as it could be by any act of the employer—and the fact that the strikers retain in their possession some of the employer's property (switch keys, books of rules, etc.) does not in any way alter the case.³³ The employer cannot thereafter be compelled to employ again any of them, by any law, or by any order of any court, on any terms, or under any conditions.³⁴

³¹ *United States v Haggerty*, 116 Fed. 510.

³² *Pierce v Stablemen's Union*, (Cal.) 103 Pac. 323; *Goldfield Consolidated Mines Co. v Goldfield Miners' Union*, 159 Fed. 500; *Pope Motor Car Co. v Keagan*, 150 Fed. 148; *Nat'l Fireproofing Co. v Mason Builders' Ass'n*, 145 Fed. 260; *Atchison, etc. R. Co. v Gee*, 139 Fed. 582; *Knudson v Benn*, 123 Fed. 632; *New York, etc. R. Co. v Wenger*, 9 Ohio Dec. 815. Compare statement of Judge Grosseup in *Iron Moulders' Union v Allis-Chalmers Co.* 166 Fed. 45, 52, 20 L. R. A. N. S. 315, in which he says: "Neither strike nor lockout completely terminates * * * the relationship between the parties. The employes who remain to take part in the strike or weather the lockout

do so that they may be ready to go to work again on terms to which they shall agree—the employer remaining ready to take them back on terms to which he shall agree. Manifestly then, pending a strike or lockout, and as to those who have not finally and in good faith abandoned it, a relationship exists between employer and employe, that is neither that of employer and employe, nor again that of employer looking among strangers for employes or employers seeking from strangers, employment."

³³ *New York, etc. R. Co. v Wenger*, 9 Ohio Dec. (Reprint) 815.

³⁴ *Union Pacific R. Co. v Ruef*, 120 Fed. 102, 114; *Goldfield Consolidated Mines Co. v Goldfield Miners' Union*, 159 Fed. 509.

He is entitled to hire workmen to fill the place of those who have left him. And any workman seeking work has a right to make a contract with such an employer to work for him in the place of any one of the men who have left him to go out upon a strike.³⁵ The right of a labor union to strike is no higher than the right of a non-union workman to take employment in place of the strikers.³⁶ The former employes have no lawful concern therewith and have no lawful ground of complaint.³⁷ Whatever difference of opinion, there may be as to the propriety or policy of other men taking the place of men on strikes, yet under the law this right is clear and undisputed and there never was any decision to the contrary.³⁸

³⁵ Mathews v People, 202 Ill. 389, 67 N. E. 28, 63 L. R. A. 73, 95 Am. St. Rep. 241.

³⁶ Pierce v Stablemen's Union, (Cal.) 103 Pac. 323.

³⁷ Goldfield Consolidated Mines Co. v Goldfield Miners' Union, 159 Fed. 500, 519; Union Pacific R. Co. v Ruef, 120 Fed. 102.

³⁸ Hoster Brewing Co. v Giblin, 14 Ohio Dec. N. P. 305.

CHAPTER V.

ACTS IN FURTHERANCE OF STRIKES.

§ 59. In general.

§ 60. Persuading others to join strike.

§ 61. Persuading others not to accept employment.

§ 62. Persuading others not to work for manufacturers who have contracted to complete unfinished work for party against whom strike declared.

§ 63. Use of force, violence or intimidation to prevent others from continuing in or entering employment.

§ 64. Use of fraud to prevent others working.

§ 65. Payment of benefits to members or non-members.

§ 66. Posting names of contributors and non-contributors to strike fund.

§ 59. In general.

The law has granted to workmen the right to strike to secure better conditions from their employers and the right so granted necessarily carries with it the right to use all means and agencies necessary to render the strike effective, which are not in themselves unlawful, nor inconsistent with the rights of others.³⁹ The law will

Cross References.

For other matter relating to acts in furtherance of strikes see the chapters relating to **BOYCOTTS OF LABOR, BOYCOTTS OF CAPITAL AND SUBSTANTIVE LAW RELATING THERETO, EXERCISE BY UNION OF DISCIPLINARY MEASURES AGAINST ITS MEMBERS AS AFFECTING RIGHTS OF THIRD PARTIES, PICKETING, LIABILITY TO WORKMEN FOR PREVENTING THEM FROM WORKING BY FORCE, VIOLENCE, OR INTIMIDATION DIRECTED AGAINST THEM, PROCURING BREACH OF CONTRACT, INTERFERENCE WITH OR OBSTRUCTION OF INTERSTATE COMMERCE, OBSTRUCTING OR RETARDING THE MAILS.**

³⁹ *Indiana*.—Karges Furniture Co. v Amalgamated Woodworkers' Union, 165 Ind. 421, 71 N. E. 877, 2 L. R. A. N. S. 788.

Massachusetts.—See opinion of

Sheldon, J., in *L. D. Willcutt & Sons Co. v. Driscoll*, 200 Mass. 110, 85 N. E. 897.

Minnesota.—Gray v Building Trades Council, 91 Minn. 171, 97 N. W. 663, 63 L. R. A. 753, 103 Am. St. Rep. 477.

New York.—Reynolds v Everett, 144 N. Y. 189, 39 N. E. 72; Mills v United States Printing Co., 91 N. Y. Suppl. 185, 91 App. Div. 605.

Oregon.—Longshore Printing & Publishing Co. v Howell, 26 Ore. 527, 38 Pac. 547, 28 L. R. A. 464, 46 Am. St. Rep. 640.

Pennsylvania.—Morris Coal Mining Co. v Guy, 14 Pa. Dist. Rep 600.

United States.—Iron Moulders' Union v Allis-Chalmers Co., 166 Fed. 45, 20 L. R. A. N. S. 315; Goldfield Consolidated Mines Co. v Goldfield Miners' Union, 159 Fed. 500, 519;

not deprive endeavor and energy of their just reward when exercised for a legitimate purpose in a legitimate manner."⁴⁰ "This embraces the right to support their contest by argument, persuasion, and such favors and accommodations as they have within their control."⁴¹ But however justifiable or even laudable may be the ultimate objects of a strike, unlawful means must not be employed in carrying it on,⁴² such for instance as the use of force, violence or intimidation to prevent others from continuing in or accepting employment from the party against whom the strike is in operation,⁴³ or the use of coercive measures to prevent his customers or prospective customers from dealing with him,⁴⁴ or dealers in materials or products necessary to the carrying on of his business from selling to him,⁴⁵ or the procuring of others to commit some unlawful act such as a breach of contract,⁴⁶ by an independent contractor with the party against whom the strike is in operation,⁴⁷ or of a service contract for a definite time either by the employer against whom the strike is in operation,⁴⁸ or by his employees bound by such contract.⁴⁹ It has been said that in contests between capital and labor, the only means of injuring each other, that are lawful are those that operate

Southern R. Co. v Machinists' Local Union, 111 Fed. 49, 55.

⁴⁰ *Karges Furniture Co. v Amalgamated Woodworkers' Union*, 165 Ind. 421, 71 N. E. 877, 2 L. R. A. N. S. 788.

⁴¹ *Karges Furniture Co. v Amalgamated Woodworkers' Union*, 165 Ind. 421, 71 N. E. 877, 2 L. R. A. N. S. 788.

⁴² *L. D. Willcutt & Sons Co. v. Driscoll*, 200 Mass. 110, 85 N. E. 897; and see *Infra* this Chapter Section 63 and *Chapters VII, Boycotts of Capital, and Substantive Law Relating Thereto; IX Boycotts of Labor, XI Liability to Workmen for Preventing Them from Working by Force, Violence or Intimidation, XIII Picketing, XVI Procuring Breach of Contract, XIV Interference With or Obstruction of Interstate Commerce.*

⁴³ See *Infra* this Chapter, Section 63; *Chapters VII Boycotts of Capital,*

and Substantive Law Relating Thereto, Sections 74, 91, 93, 100; *X Liability to Workmen for Preventing Them from Working by Force, Violence or Intimidation; XIII Picketing.*

⁴⁴ See *Infra Chapters VII Boycotts of Capital, and Substantive Law Relating Thereto*, Sections 75, 91, 93, 101; *Picketing*, Section 172.

⁴⁵ See *Infra Chapter VII, Boycotts of Capital, and The Substantive Law Relating Thereto*, Sections 80, 91, 93, 104.

⁴⁶ See generally Chapter XVI *Procuring Breach of Contract.*

⁴⁷ See *Infra Chapter Boycotts of Capital, and The Substantive Law Relating Thereto*, Sections 81, 91, 93, 105.

⁴⁸ See *Infra Chapter XVI Procuring Breach of Contract*, Section 211.

⁴⁹ See *Infra Chapter XVI Procuring Breach of Contract*, Section 207.

directly and immediately upon the control and supply of work done and of labor to do it, and thus directly affect the apportionment of the common fund, for only at this point exists the competition, the evils of which organized society will endure rather than suppress the freedom and initiative of the individual.⁵⁰ This statement, however, as is shown in a subsequent chapter, is very far from being a correct exposition of the law. In aid of a justifiable strike it would be perfectly lawful for the strikers, by concerted agreement to withhold not only their labor but also their patronage from the party against whom the strike was in operation,⁵¹ and they would also be acting squarely within their rights in persuading others than themselves to withhold patronage, provided, this would involve no breach of contract on the part of those so persuaded.⁵² In respect of unlawful strikes an entirely different question is presented. If the strike is itself unlawful, any acts done in furtherance thereof, though otherwise innocent would necessarily be of the same character, and would place the striking combination in an attitude of antagonism to the law. If the object sought to be gained is unlawful, it is immaterial what means are sought to be used to effect it.⁵³

§ 60. Persuading others to join strike.

In furtherance of the strike, the strikers may use peaceful persuasion, argument or entreaty, to procure other workmen to join them and cease working for the party against whom the strike is directed, in order that the employer may be forced into taking back the strikers on their own terms.⁵⁴ So long as the betterment of labor conditions is the main object sought, even though the strikers may

⁵⁰ *Iron Moulders' Union v Allis-Chalmers Co.*, 166 Fed. 45, 20 L. R. A. N. S. 315.

⁵¹ See *Infra* Chapter VII *Boycotts of Capital, and The Substantive Law Relating Thereto*, Section 71.

⁵² See *Infra* Chapter VII *Boycotts of Capital, and The Substantive Law Relative Thereto*, Section 72; and generally Chapter XVI *Procuring Breach of Contract*; XIII *Picketing*, Section 172.

⁵³ See *Infra* this Chapter, Sections 60, 61; and Chapters VII *Boycotts of*

Capital, and Substantive Law Relative Thereto, Section 72; XI *Exercise by Union of Disciplinary Measures Against Its Members as Affecting Rights of Third Parties*, Section 147; XIII, *Picketing*, Section 167.

⁵⁴ *Illinois*.—*Christensen v Kellogg Switchboard & Supply Co.*, 110, 111 App. 61; *Beaton v Tarrant*, 102, 111 App. 124.

Indiana.—*Karges Furniture Co. v Amalgamated Woodworkers' Union*, 165 Ind. 421, 75 N. E. 877, 2 L. R. A. N. S. 788.

succeed in persuading all the available laborers to support the strike, and having thus secured a monopoly of the labor market, compel the employer after a long struggle and great loss of profit, to yield to their demands or go out of business, yet such injuries cannot be regarded as malicious or such acts as criminal or unlawful.⁵⁵ An

Kentucky.—Underhill v Murphy, 117 Ky. 640, 78 S. W. 482, 111 Am. St. Rep. 262.

Michigan.—Beck v Railway Teamsters' Protective Union, 118 Mich. 497, 77 N. W. 13, 74 Am. St. Rep. 421, 42 L. R. A. 407.

Minnesota.—Gray v Building Trades Council, 91 Minn. 171, 97 N. W. 663, 103 Am. St. Rep. 477, 63 L. R. A. 753.

Missouri.—Hamilton-Brown Shoe Co. v Saxey, 132 Mo. 212, 32 S. W. 1106, 52 Am. St. Rep. 622.

New Jersey.—Cumberland Glass Mfg. Co. v Glass Bottle Blowers' Ass'n, 59 N. J. Eq. 49, 46 Atl. 208.

New York.—Nat'l Protective Ass'n v Cumming, 170 N. Y. 315, 63 N. E. 370, 88 Am. St. Rep. 648, 58 L. R. A. 135; Reynolds v Everett, 144 N. Y. 189, 39 N. E. 72, (affirming 67 Hun. 294, 22 N. Y. Suppl. 306); Typothetae of City of New York v Typographical Union No. 6, 117 N. Y. Suppl. 70; Jones v Maher, 116 N. Y. Suppl. 180, 62 Misc. 388; Searle Mfg. Co. v Terry, 106 N. Y. Suppl. 438, 56 Misc. 265; Butterick Pub. Co. v Typographical Union No. 6, 100 N. Y. Suppl. 292, 50 Misc. 1; Krebs v Rosenstein, 31 Misc. 661, 66 N. Y. Suppl. 42; Rogers v Evarts, 17 N. Y. Suppl. 264; People v Kostka, 4 N. Y. Cr. Rep. 429; People v Wilzig, 4 N. Y. Cr. Rep. 403.

Ohio.—Brown Mfg. Co. v Local Union No. 76, 12 Ohio Dec. N. P. 753; Rickard Boiler & Engine Co. v Benner, 14 Ohio Dec. N. P. 357; Morgan Engineering Co. v Nichols, 13 Ohio Dec. N. P. 614; Eureka Foundry Co. v Lehker, 13 Ohio Dec. N. P. 398;

Standard Tube etc. Co. v International Union, 9 Ohio Dec. 692; Perkins v Rogg, 11 Ohio Dec. (Reprint) 585. But see Brunsman v Atherton, 12 Ohio Dec. N. P. 547.

Pennsylvania.—Erdman v Mitchell, 207 Pa. St. 79, 56 N. E. 327, 99 Am. St. Rep. 783, 63 L. R. A. 534; Cote v Murphy, 159 Pa. St. 419, 28 Atl. 190, 39 Am. St. Rep. 686, 23 L. R. A. 135; Murdock v Walker, 152 Pa. St. 595, 25 Atl. 492, 34 Am. St. Rep. 678; Cook v Dolan, 19 Pa. Co. Ct. Rep. 401, 6 Pa. Dist. Rep. 524; Morris Run Coal Min. Co. v Guy, 14 Pa. Dist. Rep. 600; State Line etc. R. Co. v Sullivan, 11 Pa. Dist. Rep. 509; Patterson v Building Trades Council, 11 Pa. Dist. Rep. 500. And see McCandless v O'Brien, 38 Pa. L. J. 435, 8 Lanc. 254.

Virginia.—Everett-Waddey Co. v Richmond Typographical Union, 100 Va. 188, 53 S. E. 273, 5 L. R. A. N. S. 792.

United States.—Goldfield Consolidated Mines Co. v Goldfield Miners' Union, 159 Fed. 500; Allis-Chalmers Co. v Iron Moulders' Union, 150 Fed. 155 (affirmed in 166 Fed. 45, 20 L. R. A. N. S. 315.); Pope Motor Car Co. v Keegan, 150 Fed. 148; Atchison etc. R. Co. v Gee, 139 Fed. 582; Union Pac. R. Co. v Ruef, 120 Fed. 102; United States v Weber, 114 Fed. 950; Reinecke Coal Min. Co. v Wood, 112 Fed. 477; Allis-Chalmers Co. v Reliable Lodge, 111 Fed. 264; Cons. Steele & Wire Co. v Murray, 80 Fed. 811.

⁵⁵ Allis-Chalmers Co. v Iron Moulders' Union, 150 Fed. 155, 171.

injunction will not lie to restrain the commission of such acts,⁵⁶ and those who participated therein are not liable to a criminal prosecution.⁵⁷ The right of each party to strive to obtain the terms most beneficial to himself, and the right, of a number of persons similarly situated to unite to accomplish such ends is clear, and individuals having similar interests, may by all peaceable argumentative means persuade others to join with them in their efforts to do what they fairly consider to be beneficial to themselves as a class.⁵⁸ What is here said presupposes, of course, that the persons sought to be persuaded are not asked to do something unlawful,⁵⁹ as for instance to commit a breach of contract of employment for a definite time,⁶⁰ and that the strike itself is lawful. If the strike is unlawful, any acts done in furtherance thereof though innocent in themselves would necessarily be of the same character and may be enjoined if the conditions which call for equitable relief by injunction are present.⁶¹ If an unlawful result is intended, and secured it makes no difference whether it is accomplished by mere persuasion or by physical violence.⁶² A further limitation on the right to use persuasion is that in bringing influences to bear upon those whom they wish to make common cause with themselves, the striker's conduct must be such as commends itself to reasonable men.⁶³ Persuasion too em-

⁵⁶ *Jones v E. Van Winkle Gin & Machine Works*, 131 Ga. 336, 62 S. E. 236, 127 Am. St. Rep. 235; *Rogers v Evarts*, 17 N. Y. Suppl. 264; *Morgan Engineering Co. v Nichols*, 13 Ohio Dec. N. P. 614; *Morris Run Coal Mining Co. v Guy*, 14 Pa. Dist. Rep. 600; *McKeesport & Yonghohgheny Ice Co. v Union*, 37 Pitts. (Pa.) 55. But see *Brunsmann v Atherton*, 12 Ohio Dec. N. P. 547.

⁵⁷ *People v Kostka*, 4 N. Y. Cr. Rep. 429; *People v Wilzig*, 4 N. Y. Cr. Rep. 403.

⁵⁸ *Reinecke Coal Min. Co. v Wood*, 112 Fed. 477.

⁵⁹ *Goldfield Consolidated Mines Co. v Goldfield Miners' Union*, 159 Fed. 500.

⁶⁰ *Southern R. Co. v. Machinists' Local Union*, 111 Fed. 49. See also *Jersey City Printing Co. v Cassidy*, 63

N. J. Eq. 759, 53 Atl. 230; *Parker v. Bricklayers' Union No. 1*, 21 W. L. B. 223, 10 Ohio Dec. (Reprint) 458; *Morgan Engineering Co. v Nichols*, 13 Ohio Dec. N. P. 614; *United States v Stevens*, 2 Hask. 164, Fed. Cas. 16, 392. And see *Infra* Chapter XVI *Procuring Breach of Contract*.

⁶¹ *A. R. Barnes & Co. v Chicago Typographical Union*, 232 Ill. 424, 83 N. E. 940, 14 L. R. A. N. S. 1018; *Reynolds v Davis*, 198 Mass. 294, 84 N. E. 457, 17 L. R. A. N. S. 162; *Long v Bricklayers & Brickmasons' International Union*, 17 Pa. Dist. Rep. 984.

⁶² *A. R. Barnes & Co. v Chicago Typographical Union*, 232 Ill. 421, 83 N. E. 940, 14 L. R. A. N. S. 1018.

⁶³ *Standard Tube etc. Co. v International Union*, 9 Ohio Dec. 692.

phatic or too long and persistently continued may itself become a nuisance and its use a form of unlawful coercion, restrainable by injunction.⁶⁴ Whenever the attempt to persuade develops into an attempt to coerce the mind or will, the legal limit of the right of the striking workmen has been passed and the act becomes an unlawful infringement upon the rights of others.⁶⁵ The persuasion must be of such a character as to leave the person solicited free to do as he pleases.⁶⁶ Nor is it permissible for strikers to go upon the premises of the person against whom the strike is in operation, even to use peaceable persuasion and argument to induce his employees to quit work. In so doing, they are clearly trespassers.⁶⁷ No man has a right to enter upon the premises of another for the purpose of inducing persons in the employ of that other to leave their employment to the injury of the employer, for the purpose of getting higher wages or working less hours for the same pay, or for any other reason. The man who so enters is a trespasser, and one who leads several hundred strikers on one's premises for the purpose of inducing his workmen to strike, is liable for damages done by them.⁶⁸

§ 61. Persuading others not to accept employment.

Striking workmen may use peaceable persuasion and argument to induce other workmen not to accept employment from the party against whom the strike is in operation.⁶⁹ Such acts will not be re-

⁶⁴ *Otis Steel Co. v Local Union No. 218*, 110 Fed. 692, 698; *Rogers v Evarts*, 17 N. Y. Suppl. 264; *Butterick Pub. Co. v Typographical Union No. 6*, 100 N. Y. Suppl. 229, 50 Misc. 1. And see *Frank v Herald*, 63 N. J. Eq. 443, 52 Atl. 152, in which it was said that the person whom it is sought to persuade must be willing to listen. No person has a right to impose upon another his arguments or persuasions against the willingness of that person to listen.

⁶⁵ *Rogers v Evarts*, 17 N. Y. Suppl. 264; *Eureka Foundry Co. v Lehker*, 13 Ohio Dec. N. P. 398; *Allis-Chalmers Co. v Reliable Lodge*, 111 Fed. 264.

⁶⁶ *Karges Furniture Co. v Amalgamated Woodworkers' Union*, 165 Ind.

421, 75 N. E. 877, 2 L. R. A. N. S. 788; *Goldfield Consolidated Mines Co. v Goldfield Miners' Union*, 159 Fed. 500; *Pope Motor Car Co. v Keegan*, 150 Fed. 148.

⁶⁷ *York etc. R. Co. v Wenger*, 9 Ohio Dec. 85.

⁶⁸ *Webber v Barry*, 66 Mich. 127, 33 N. W. 289, 11 Am. St. Rep. 466.

⁶⁹ *Georgia*.—*Jones v E. Van Winckle Gin & Machine Works*, 131 Ga. 336, 62 S. E. 236, 127 Am. St. Rep. 235.

Illinois.—*Beaton v Tarrant*, 102 Ill. App. 124.

New Jersey.—*W. & A. Fletcher Co. v International Ass'n of Machinists*, 55 Atl. 1077.

New York.—*Johnston Harvester Co. v Meinhardt*, 60 How. Pr. 168; *Jones v Maher*, 116 N. Y. Suppl. 180, 62

strained by injunction,⁷⁰ and those participating therein are not liable to a criminal prosecution.⁷¹ The same considerations which make it lawful for striking workmen to persuade other workmen to quit the service,⁷² apply here, and the right is likewise subject to practically the same limitations, namely that the strike itself must be lawful, and that the persuasion must not be of such a nature that it amounts to coercion.

§62. Persuading others not to work for manufacturers who have contracted to complete unfinished work for party against whom strike declared.

Where after the inception of a strike with a lawful end in view, the employer sends his material to manufacturers of the same kind of goods to be worked up for him, it is lawful for the strikers to persuade the employes of such manufacturers, who are members of the same union as the strikers to refuse to work on such materials, and notify their employers that a strike will be inaugurated unless the contracts with the employer against whom the strike is in force are cancelled. If the proprietor has the right—which seems to be perfect—to seek the aid of fellow manufacturers to the end that the necessary element of labor should enter his product, the strikers have a reciprocal right of seeking the aid of fellow workmen to prevent that end. To whatever extent employers may lawfully coöperate to control and supply the conditions of work to be done

Misc. 388; *Stearns v Marr*, 41 Misc. 252, 84 N. Y. Suppl. 36; *People v Kostka*, 4 N. Y. Cr. Rep. 434; *Searle Mfg. Co. v Terry*, 106 N. Y. Suppl. 438, 56 Misc. 265; *Butterick Pub. Co. v Typographical Union*, 100 N. Y. Suppl. 292, 50 Misc. 1.

Ohio.—*Standard Tube etc. Co. v International Union*, 9 Ohio Dec. 692; *Brown Mfg. Co. v Local Union No. 76*, 12 Ohio Dec. N. P. 753; *Morgan Engineering Co. v Nichols*, 13 Ohio Dec. N. P. 614. But see *Brunsmann v Atherton*, 12 Ohio Dec. N. P. 547.

Pennsylvania.—*Cote v Murphy*, 159 Pa. St. 419, 28 Atl. 190, 39 Am. St. Rep. 686, 23 L. R. A. 135; *Patterson v Building Trades Council*, 11 Pa. Dist. Rep. 500.

Virginia.—See *Everett-Waddey Co. v Richmond Typographical Union*, 105 Va. 188, 53 S. E. 273, 5 L. R. A. N. S. 792.

United States.—*Iron Moulders' Union v Allis-Chalmers Co.* 166 Fed. 45, 20 L. R. A. N. S. 315; *Pope Motor Car Co. v Keegan*, 150 Fed. 148; *Allis-Chalmers Co. v Reliable Lodge*, 111 Fed. 264.

⁷⁰ *Jones v E. Van Winkle Gin & Machine Works*, 131 Ga. 336, 62 S. E. 236, 127 Am. St. Rep. 235; *Johnston Harvester Co. v Meinhardt*, 60 How. Pr. (N. Y.) 168.

⁷¹ *People v Kostka*, 4 N. Y. Cr. Rep. 434.

⁷² See the preceding section.

to the same extent should be recognized the right of workmen to combine and coöperate to control the supply and the conditions of the labor that is necessary to the doing of the work.⁷³ The fact that this cessation of work on the part of the employes so persuaded might involve their employers in a breach of contract is wholly incidental and clearly distinguishable from a direct interference with contract relations by persuading men to break their contracts of employment.

§ 63. Use of force, violence or intimidation to prevent others from continuing in or entering employment.

While in aid of a lawful strike, labor unions, their officers and members are entitled to use peaceable persuasion and argument to procure others to quit working for or not to accept employment from the party against whom the combination is designed to operate, the use of force, violence, or intimidation to obtain these ends is not permissible,⁷⁴ and it is not material that the workmen who are subjected to these acts are not bound by contract to enter into or continue in

⁷³ *Iron Moulders' Union v Allis-Chalmers Co.*, 166 Fed. 45, 20 L. R. A. N. S. 315.

⁷⁴ *Connecticut*.—*State v Stockford*, 77 Conn. 227, 58 Atl. 769, 107 Am. St. Rep. 28.

Georgia.—*Jones v E. Van Winckle Gin & Machine Works*, 131 Ga. 336, 62 S. E. 236, 127 Am. St. Rep. 235.

Illinois.—*A. R. Barnes & Co. v Chicago Typographical Union*, 232 Ill. 424, 83 N. E. 940, 14 L. R. A. N. S. 1018; *O'Brien v People*, 216 Ill. 354, 75 N. E. 108; 108 Am. St. Rep. 219; *Franklin Union v People*, 220 Ill. 355, 77 N. E. 176, 110 Am. St. Rep. 248, 4 L. R. A. N. S. 1011; *Beaton v Tarrant*, 102 Ill. App. 124.

Kentucky.—*Underhill v Murphy*, 117 Ky. 640, 78 S. W. 482, 111 Am. St. Rep. 262.

Massachusetts.—*L. D. Willcutt & Sons Co. v Driscoll*, 200 Mass. 110, 85 N. E. 897; *Plant v Woods*, 176 Mass. 492, 57 N. E. 1011, 51 L. R. A. 339,

79 Am. St. Rep. 330; *Vegelahn v Guntner*, 157 Mass. 92, 44 N. E. 1077, 57 Am. St. Rep. 453, 55 L. R. A. 92; *Sherry v Perkins*, 147 Mass. 212, 17 N. E. 307, 9 Am. St. Rep. 689.

Michigan.—*Enterprise Foundry Co. v Iron Moulders' Union*, 149 Mich. 311, 112 N. W. 685, 13 L. R. A. N. S. 548.

Missouri.—*Hamilton Brown Shoe Co. v Saxey*, 131 Mo. 212, 32 S. W. 1106, 52 Am. St. Rep. 622; *Swaine v Wilson*, 75 Mo. App. 74.

Nevada.—*Branson v Industrial Workers of the World*, 95 Pac. 354.

New Jersey.—*George Jonas Glass Co. v Glass Bottle Blowers' Ass'n*, 72 N. J. Eq. 653, 66 Atl. 953; *Jersey City Printing Co. v Cassidy*, 63 N. J. Eq. 759; 53 Atl. 231; *Connett v United Hatters' of North America (N. J.)*, 74 Atl. 188.

New York.—*Typothetae of City of New York v Typographical Union No. 6*, 117 N. Y. Suppl. 70; *Jones v Maher*,

116 N. Y. Suppl. 180, 62 Misc. 388; Davis v Zimmerman, 91 Hun. 486, 36 N. Y. Suppl. 303; Johnson Harvester Co. v Meinhardt, 60 How. Pr. 168; New York Cent Iron Works v Brennan, 105 N. Y. Suppl. 865; Butterick Pub. Co. v Typographical Union No. 6, 100 N. Y. Suppl. 292, 50 Misc. 1; W. P. Davis Mach Co. v Robinson, 84 N. Y. Suppl. 837, 41 Misc. 329; Master Horseshoers' Protective Ass'n v Quinlivan, 82 N. Y. Suppl. 288, 83 App. Div. 459; Herzog v Fitzgerald, 77 N. Y. Suppl. 366, 74 App. Div. 110; Sterns v Marr, 84 N. Y. Suppl. 36, 41 Misc. 252; People v Gill, 5 N. Y. Cr. Rep. 509.

Ohio.—Hoster Brewing Co. v Gibling, 14 Ohio Dec. N. P. 305; New York etc. R. Co. v Wenger, 17 Ohio Kkly L. Bul. 306; Hillenbrand v Building Trades Council, 14 Ohio Dec. N. P. 628; Morgan Engineering Co. v Nichols, 13 Ohio Dec. N. P. 614; Humphries v Matthias, 12 Ohio Dec. N. P. 517; Brown Mfg. Co. v Local Union No. 76, 12 Ohio Dec. N. P. 753; Perkins v Rogg, 11 Ohio Dec. (Reprint) 585; Dayton Mfg. Co. v Metal Polishers' Union, 11 Ohio Dec. 643.

Pennsylvania.—O'Neil v Behanna, 182 Pa. St. 236, 37 Atl. 843, 61 Am. St. Rep. 702, 38 L. R. A. N. S. 382; Wick China Co. v Brown, 164 Pa. St. 449, 30 Atl. 261; Cote v Murphy, 159 Pa. St. 420, 28 Atl. 190, 39 Am. Rep. 686, 23 L. R. A. 135; Murdock v Walker, 152 Pa. St. 595, 25 Atl. 492, 34 Am. St. Rep. 678; Temple Iron Co. v Carmanoski, 10 Kulp 37; McCandless v O'Brien, 38 Pa. L. J. 435; Morris Run Coal Min. Co. v. Guy, 14 Pa. Dist. Rep. 600; State Line etc. R. Co. v Brown, 11 Pa. Dist. Rep. 509; Patterson v Building Trades Council, 11 Pa. Dist. Rep. 500; Cook v. Dolan, 19 Pa. Co. Ct. 401, 6 Pa. Dist. 524;

House Painters' Ass'n v Feeney, 29 Pa. Co. Ct. 524.

Virginia.—Everett-Waddey Co. v Richmond Typographical Union, 105 Va. 188, 53 S. E. 273, 5 L. R. A. N. S. 792.

Wisconsin.—Vilter Mfg. Co. v Humphrey, 132 Wis. 587, 112 N. W. 1095, 13 L. R. A. N. S. 591. And see Badger Brass Mfg. Co. v Daly, 137 Wis. 601, 119 N. W. 328.

United States.—In Re Debs, 158 U. S. 564, 589, 15 Sup. Ct. 900, 39 L. Ed. 1092; Goldfield Consolidated Min. Co. v. Goldfield Miners' Union, 159 Fed. 500; Rocky Mountain Bell Telephone Co. v Montana Federation of Labor, 156 Fed. 809; Allis-Chalmers Co. v Iron Moulders' Union, 150 Fed. 155; Pope Motor Car Co. v Keegan, 150 Fed. 148; Knudsen v Benn, 123 Fed. 635; Wabash R. Co. v Hannahan, 121 Fed. 563; Union Pacific R. Co. v Ruef, 120 Fed. 102; United States v Weber, 114 Fed. 950; Allis-Chalmers Co. v Reliable Lodge, 111 Fed. 264; Otis Steel Co. v Iron Moulders Union, 110 Fed. 698; American Steel & Wire Co. v Wire Drawers' Union, 90 Fed. 608; Cons. Steel & Wire Co. v Murray, 80 Fed. 811; Arthur v Oakes, 63 Fed. 310, 11 C. C. A. 209, 25 L. R. A. 414, 4 Inters. Com. Rep. 744; Lake Erie etc. R. Co. v Bailey, 61 Fed. 494; Coeur D'Alene Consol. & Min. Co. v Miners' Union of Wardner, 51 Fed. 260, 19 L. R. A. 382.

England.—Quinn v Leatham, (1901) A. C. 495, 70 L. J. P. C. 76, 85 L. T. 289, 50 W. R. 139, 65 J. P. 708; Reg. v Druitt, 10 Cox Cr. Cas. 592; Reg. v Duffield, 5 Cox Cr. Cas. 432; Springhead Spinning Co. v. Riley, L. R. 6 Eq. 561; Reg. v Hewitt, 5 Cox Cr. Cas. 162.

Canada.—Krug Furniture Co. v Berlin Amalgamated Union of Woodworkers, 5 Ont. Law Rep. 463.

the employment of such party.⁷⁵ The use of such means is not legalized by statutory provisions, authorizing the orderly and peaceable assembling or co-operation of persons employed in any trade or handicraft to secure an advance in wages or the maintenance of the rate paid.⁷⁶ It is a gross violation of the rights of the employer and also of the workmen at whom these acts are aimed. They have no right to impose the course of conduct or rules adopted for themselves upon any other man against his wishes.⁷⁷ While no one has a right to be hedged in and protected from competition in business, he has nevertheless a right to be free from wanton, malicious, and insolent interference, disturbance or annoyance.⁷⁸ Every man has the right to work for whom he pleases and for any sum he thinks proper,⁷⁹ provided he is not subject to restraint for crime,⁸⁰ and no person has the right to prevent him from doing so.⁸¹ "The right of personal liberty to work if one wishes without fear is a right of which no man can with any shadow of equity deprive another. If strikes necessarily require as a condition of success the violation of personal liberty, then strikes stand self-condemned."⁸² The same law which guarantees employes in their right to quit their employment at their own will also guarantees the other employes the right to remain at their will and pleasure,⁸³ and an interference

⁷⁵ *Vegeahn v Guntner*, 157 Mass. 92, 44 N. E. 1077, 57 Am. St. Rep. 443, 55 L. R. A. 92.

⁷⁶ *Johnston Harvesting Co. v Meinhardt*, 60 How. Pr. (N. Y.) 168.

⁷⁷ *Vegeahn v Guntner*, 157 Mass. 92, 44 N. E. 1077, 57 Am. St. Rep. 443, 55 L. R. A. 92; *Union Pac. R. Co. v Ruef*, 120 Fed. 102; *Allis-Chalmers Co. v Reliable Lodge*, 111 Fed. 264; *Otis Steel Co. v Iron Moulders' Union*, 110 Fed. 698.

⁷⁸ *Walker v Cronin*, 107 Mass. 555; *Crump v Com.* 84 Va. 927, 6 S. E. 620, 10 Am. St. Rep. 895.

⁷⁹ *District of Columbia*.—*Buck Stove & Range Co. v American Federation of Labor*, 35 Wash. L. Rep. 797, 70 Alb. L. J. 8.

Illinois.—*Doremus v Hennessey*, 176 Ill. 608, 52 N. E. 924, 68 Am. St. Rep. 203, 43 L. R. A. 795.

New Jersey.—*Frank v Herold*, 63 N. J. Eq. 143, 52 Atl. 152.

New York.—*Master Stevedores Ass'n v Walsh*, 2 Daly 1.

Pennsylvania.—*Cote v Murphy*, 159 Pa. St. 420, 28 Atl. 190, 39 Am. Rep. 686, 23 L. R. A. 135; *Temple Iron Co. v Carnanoski*, 10 Kulp 39.

Virginia.—*Crump v Com.* 84 Va. 941, 6 S. E. 620, 10 Am. St. Rep. 895.

England.—*Rex v Batt*, 6 C & P 458.

⁸⁰ *Frank v Herold*, 63 N. J. Eq. 143, 52 Atl. 152.

⁸¹ *Frank v Herold*, 63 N. J. Eq. 143, 52 Atl. 152; *Lyons v Wilkins*, L. R. 1 Ch. (1896) 811.

⁸² *Archbishop Ireland in North American Review* of Oct. 1901. Quoted with approval in *Southern R. Co. v. Machinists' Local Union*, 111 Fed. 54.

⁸³ *Hamilton-Brown Shoe Company. v*

with this right is an invasion of the very right of free labor for which the striking workman is himself contending.⁸⁴ On the same principle every employer of labor has the right to determine for himself whom he will employ and what the terms of the employment shall be.⁸⁵ The primary legal right which he possesses may be described as the right to a free labor market—the right to have labor flow freely to him,⁸⁶ and the further right to the continuing service of those who accepted employment at will until such services were terminated by the free act of one or the other party to the employment.⁸⁷ He has the right to engage all persons who are willing to work for him, at such prices as may be mutually agreed upon,⁸⁸ and this right cannot be infringed by methods which employ force, violence, or intimidation.⁸⁹ As the law bears equally upon all, it is self-evident that if any labor union or organization could by threats, force, and intimidation lawfully prevent the members of any other union or organization from laboring for employers, or could by force, threats, and intimidation prevent employers from hiring members of other unions or organizations, every other union or organization would have the same and equal right, resulting eventually in control by the organization exercising the most force and violence, and in the overthrow and subversion of law and order.⁹⁰ As was

Saxey, 131 Mo. 212, 32 S. W. 1106, 52 Am. St. Rep. 622.

⁸⁴ *Brown Mfg. Co. v Local Union* 76, 12 Ohio Dec. N. P. 753; *Perkins v Rogg*, 11 Ohio Dec. (Reprint) 585.

⁸⁵ *Master Stevedores' Ass'n v Walsh*, 2 Daly (N. Y.) 1; *Crump v Com*, 84 Va. 941, 6 S. E. 620, 10 Am. St. Rep. 895. See also *Doremus v Hennessey*, 176 Ill. 608, 52 N. E. 924, 68 Am. St. Rep. 203, 43 L. R. A. 802; *Temple Iron Co. v Carmanoski*, 10 Kulp (Pa.) 39.

⁸⁶ *Jersey City Printing Co. v Cassidy*, 63 N. J. Eq. 259, 53 Atl. 230; *Atkins v W. & A. Fletcher Co.*, 65 N. J. Eq. 658, 55 Atl. 1074; *L. D. Wilcutt & Sons Co. v Driscoll*, 200 Mass. 110, 85 N. E. 897; *Iron Moulders' Union v Allis-Chalmers Co.*, 166 Fed. 45, 20 L. R. A. N. S. 315. And see

Quinn v Leathem, (1901) A. C. 495, 70 L. J. P. C. 76, 85 L. T. 289.

⁸⁷ *Iron Moulders' Union v Allis-Chalmers Co.*, 166 Fed. 45, 50, 20 L. R. A. N. S. 315.

⁸⁸ *My Maryland Lodge v Adt*, 100 Md. 238, 56 Atl. 721, 68 L. R. A. 252; *Vegelahn v Guntner*, 157 Mass. 92, 44 N. E. 1077, 57 Am. St. Rep. 443; 35 L. R. A. 722; *Beck v Railway Teamsters' Protective Union*, 118 Mich. 497, 77 N. W. 13, 74 Am. St. Rep. 44, 42 L. R. A. 407; *Purvis v United Brotherhood of Carpenters and Joiners*, 214 Pa. St. 344, 63 Atl. 585, 12 L. R. A. N. S. 242, 112 Am. St. Rep. 272.

⁸⁹ *Master Stevedores Ass'n v Walsh*, 2 Daly (N. Y.) 1.

⁹⁰ *Branson v Industrial Workers of the World*, (Nev.), 95 Pac. 354.

said by Mr. Justice Brewer in the Debs case, "it is a lesson which cannot be learned too soon or too thoroughly that under this government of and by the people the means of redress of all wrong are through the courts and at the ballot-box, and no wrong, real or fancied, carries with it legal warrant to invite as a means of redress, the co-operation of a mob, with its accompanying acts of violence."⁹¹

§ 64. Use of fraud to prevent others working.

No man can justify an interference with another's trade or business by the use of fraud,⁹² and the procuring of workmen to quit their employment and join in a strike, by means of fraud is unlawful and in a proper case may be enjoined.⁹³ So it has been held that a combination of workmen to obstruct a manufacturer's business by intoxicating his workmen and carrying them off into concealment and thereby preventing them from working for him is an indictable conspiracy.⁹⁴

§ 65. Payment of benefits to members or non-members.

In furtherance of a lawful strike, a union may render financial assistance to its members who have gone out on a strike by giving them strike pay, and no injunction will be granted at the suit of the party against whom the strike is directed to prevent it.⁹⁵ This is one of the most usual incidents attending a strike, and the right to give strike pay is necessarily implied from the right of a union to accumulate a strike fund, which is shown in another section to be one of the proper purposes of a labor organization.⁹⁶ So to induce non-union workmen to quit the service of an employer against whom a lawful strike is in operation, the union to which the strikers belong

⁹¹ In *Re Debs*, 158 U. S. 564, 598, 599, 15 Sup. Ct. 900, 39 L. Ed. 1092.

⁹² *Illinois*.—*Doremus v Hennessey*, 176 Ill. 608, 52 N. E. 924, 68 Am. St. Rep. 203, 43 L. R. A. 802.

Indiana.—*Karges Furniture Co. v Amalgamated Woodworkers' Union*, 165 Ind. 421, 75 N. E. 877, 2 L. R. A. N. S. 788.

Maine.—*Perkins v Pendleton*, 90 Me. 166, 38 Atl. 96, 60 Am. Rep. 252.

New Jersey.—*VanHorn v VanHorn*, 56 N. J. L. 318, 28 Atl. 669.

United States.—*Allis-Chalmers Co.*

v Iron Moulders' Union, 150 Fed. 155.

⁹³ *Butterick Pub. Co. v Typographical Union No. 6*, 100 N. Y. Suppl. 292, 50 Misc. 1.

⁹⁴ *Reg v Rowland*, 5 Cox Cr. Cas. 436.

⁹⁵ *Cumberland Glass Mfg. Co. v Glass Bottle Blowers' Ass'n*, 59 N. J. Eq. 49, 46 Atl. 208; *A. R. Barnes & Co. v Berry*, 157 Fed. 883.

⁹⁶ See *Supra* Chapter II *The Right of Workmen to Combine and the Purposes for Which Combination Is Lawful*, Section 13.

may give them financial assistance,⁹⁷ such as the payment of weekly benefits, and the expenses of transportation from place to place,⁹⁸ and the employer has no standing to enjoin the commission of such acts.⁹⁹ This, it has been well said, is no more than a just provision for those who have surrendered their wages out of sympathy for the strikers.¹ In one case it was objected that this amounted to bribery but the court did not so consider it.² The rule enunciated applies equally whether those to whom the assistance is rendered merely join in the strike,³ or in addition thereto join the union.⁴ It has been held however that where a union which has originally sanctioned a strike in ignorance of the fact that some of the strikers were under contracts to serve for a definite term, subsequently after acquiring knowledge of such facts gives them strike pay to keep them out on strike, thereby inducing a continuing breach of contract, it is liable in damages to the employer.⁵ In this connection

⁹⁷ *Rogers v Evarts*, 17 N. Y. Suppl. 264; *Johnston Harvester Co. v Meinhardt*, 60 How. Pr. (N. Y.) 168; *Levy v Rosentein*, 66 N. Y. Suppl. 101; *Morris Run Coal Min. Co. v Guy*, 14 Pa. Dist. 600; *Everett-Waddey Co. v. Richmond Typographical Union*, 105 Va. 188, 53 S. E. 273, 5 L. R. A. N. S. 792. And see *Cumberland Glass Mfg. Co. v Glass Bottle Blowers' Ass'n*, 59 N. J. Eq. 49, 46 Atl. 208.

⁹⁸ *Everett Waddey Co. v Richmond Typographical Union*, 105 Va. 188, 53 S. E. 273, 5 L. R. A. N. S. 792.

⁹⁹ See cases cited in the two preceding notes.

¹ *Rogers v Evarts*, 17 N. Y. Suppl. 264.

² *Everett-Waddey Co. v Richmond Typographical Union*, 105 Va. 188, 53 S. E. 273, 5 L. R. A. N. S. 792, in which it was said: "It is the rule of such unions to pay weekly benefits, transportations, etc., to its members, and that when a person becomes a member of the union, he also becomes entitled to these benefits. It seems to have been the rule of the union, as old as the union itself, and was therefore

not put in force because of this strike. It is, of course, one of the inducements held out to non-members to become members of the union, and it is doubtless used as one of the arguments to induce persons to join the union, and it is the rule governing like associations, such as secret orders, beneficial societies, etc., and we have seen it nowhere questioned that such union or society have the right to make and carry out such a rule in the government and control of their union or society. When one becomes a member of such a union he becomes entitled to the benefits given by the union, and if he receives any of them the giving or taking of such benefits clearly could not be characterized as bribery."

³ *Rogers v Evarts*, 17 N. Y. Suppl. 264; *Johnston Harvester Co. v Meinhardt*, 60 How. Pr. (N. Y.) 168.

⁴ *Everett-Waddey Co. v Richmond Typographical Union*, 105 Va. 188, 53 S. E. 273, 5 L. R. A. N. S. 792.

⁵ *Smithies v National Ass'n of Operative Plasterers*, (1909), 1 K. B. 310, 25 T. L. R. 202.

it remains to be considered whether under any circumstances, persons having no interest in the funds of the union, such as an employer against whom a strike is in operation, can maintain proceedings to enjoin payment of strike benefits, or the payment of money to non-union men to join the strike. This question has received an affirmative answer in a recent decision of the supreme court of Massachusetts which held that a strike in violation of a contract of employment to secure something not due under the contract, was a combination interfering without justification with the employer's business, and that he was entitled to an injunction restraining the officers and members of the unions to which the strikers belonged from combining together to further the strike and from doing any acts whatever, peaceful or otherwise, in furtherance thereof, including the payment of strike benefits.⁶ It has similarly been held by the supreme court of Illinois that if the object of the strike is unlawful, the offer of money or the procuring of places in other cities, or the offer of transportation to other cities as a means of inducing other employes to join the strike will be enjoined.⁷ On the other hand the Federal Circuit Court for the Southern District of Ohio, held that an employer against whom a strike was in operation could not enjoin the officers of a union from giving its striking members strike pay. The reason assigned was that "the strike benefit fund is created by moneys deposited by the men with the general officers for the support of themselves and families, in times of strike, *and the court has no more control of it than it would have over deposits made by them in the banks.* (italics are ours).⁸ The language italicized, is, it is believed, a correct statement of the law. Now it is true that the strike in this case was a lawful one, but the language quoted makes it clear that in the opinion of the court rendering the decision it was altogether immaterial whether the strike was lawful or not. Also opposed to the Massachusetts and Illinois cases cited, are two recent English decisions. It was held by the House of Lords that an injunction against payment of strike benefits by an employer against whom a strike was directed would not lie. In this case it appeared that the

⁶ Reynolds v Davis, 198 Mass 294,
84 N. E. 457, 17 L. R. A. N. S. 162.

⁷ A. R. Barnes & Co. v Chicago
Typographical Union, 232 Ill. 424, 83

N. E. 940, 14 L. R. A. N. S. 1018.

⁸ A. R. Barnes & Co. v. Berry, 157
Fed. 883.

officers of a local union brought about a strike of its members in violation of an existing contract of service and contrary to the rules and regulations of the union of which it was a branch. The union through its governing body disapproved and repudiated the action of the local and at the outset refused strike pay. Subsequently however, after the contracts of service had terminated it commenced and continued the allowance of strike pay in contravention of its rules, and thereby furthered a continuance of the strike. The employer against whom the strike was directed brought suit against the union among other things for damages caused by illegally paying strike benefits and to enjoin further payment thereof. It was held that, the union was not liable for the acts of the officers of the local in procuring the breach of contract; that the fact that the rules were contravened in respect of strike pay could not confer on plaintiff any ground of action which otherwise he would not have possessed and that the wrong committed by the union was against its own members in dissipating its funds and not against plaintiff who had no interest therein. The action was characterized by Lord Loreburne as "an attempt by persons who are not parties to the trust to sue for breach of it those who are parties."⁹ So in another English decision not involving the question of strike pay it was held that there was no legal ground to justify the allowance of an injunction at the suit of a manufacturer to prevent a union from applying its strike funds in furtherance of the watching and besetting of his premises for the purpose of preventing persons from entering into contracts with him, though such watching and besetting was unlawful.¹⁰ On principle, the proper conclusion seems to be that whatever the character of the strike, no person not having an interest in the funds of a union has any standing to enjoin any disposition of them which the union sees fit to make.

§ 66. Posting names of contributors and non-contributors to strike fund.

The posting of names of those contributing to funds sought and lawfully used for sustaining a strike and of those who refuse to contribute, is lawful so long as the strikers keep within the law. If,

⁹ *Denaby & Cadeby Main Collieries* 22 T. L. R. 543.

¹⁰ *Yorkshire Miners' Ass'n*, 75 L. J. 383, 1 Ch. 811.
K. B., (1906) A. C. 384, 95 L. T. 561.

however, their purpose be an unlawful one, and not for an advance of wages, or if they seek to accomplish a lawful end by unlawful means, then they are guilty of illegal conspiracy, and the posting of the names of contributors and non-contributors is a part of such conspiracy and unlawful.¹¹

¹¹ *Rogers v Evarts*, 17 N. Y. Suppl. 264 (judgment affirmed in 67 Hun. 294, 22 N. Y. Suppl. 269 which in turn is affirmed in 144 N. Y. 189, 39 N. E. 72).

CHAPTER VI.

BOYCOTTS—ORIGIN, DEFINITION, CLASSES, AND ELEMENTS OF BOYCOTTS.

§ 67. Origin of term and its definition and description.

§ 68. Classes of boycotts.

§ 69. Elements of boycotts.

§ 67. Origin of term and its definition or description.

It has been suggested that the boycott had its inspiration in the proceedings of excommunication practiced in ecclesiastical tribunals.¹² The circumstances under which the term "boycott" arose, have been described as follows in a work entitled "England Under Gladstone:" "The strike was supported by a form of action, or rather, inaction, which soon became historical. Captain Boycott was an Englishman, an agent of Lord Earne, and a farmer of Lough Mask, in the wild and beautiful district of Connemara. In his capacity as agent he had served notices upon Lord Earne's tenants, and the tenantry suddenly retaliated in a most unexpected way, by, in the language of schools and society, sending Captain Boycott to coventry in a very thorough manner. The population of the region for miles around resolved not to have anything to do with him, and as far as they could prevent it, not to allow anyone else to have anything to do with him. His life appeared to be in danger; he had to claim police protection. His servants fled from him as servants flee from their masters in some plague-stricken Italian city. The awful sentence of excommunication could hardly have rendered him more helplessly alone for a time. No one would work for him, no one would supply him with food. He and his wife had to work in their own fields themselves * * * * with the

Cross References.

Compelling members to strike or withhold their patronage by the imposition of or threats to impose penalties see Chapter XI, EXERCISE BY UNION OF DISCIPLINARY MEASURES AGAINST ITS MEMBERS AS AFFECTING RIGHTS OF THIRD PARTIES.

As an interference with interstate

commerce, see Chapter XIV, INTERFERENCE WITH OR OBSTRUCTION OF IN-STATE COMMERCE.

As a violation of Rev. Stat. U. S. 3995, see Chapter XV, OBSTRUCTING AND RETARDING THE MAILS.

¹² See 19 Ir. L. Times p. 572, (cited in *Barr v Essex Trade Council*, 53 N. J. Eq. 101, 30 Atl. 881).

shadows of armed constabulary ever at their heels. The Orangemen of the North heard of Captain Boycott and his sufferings, and the way in which he was holding his ground, and they organized assistance, and sent him down armed laborers from Ulster. To prevent civil war, the authorities, had sent a force of soldiers and police to Lough Mask, and Captain Boycott's harvests were brought in and his potatoes dug by the armed Ulster laborers guarded always by the little army."¹³ From this description the deduction has been drawn that the term "boycott," originally signified violence if not murder.¹⁴ The term as usually understood at the present time has been variously defined as follows.

"A combination of many to cause a loss to one person by coercing others, against their will, to withdraw from him their beneficial business intercourse, through threats that, unless those others do so, the many will cause similar loss to them."¹⁵

"A combination to injure or destroy the trade, business or occupation of another, by threatening injury to the trade, business, or occupation of those who have business relations with him."¹⁶

"A confederation, generally secret, of many persons whose intent is to injure another by preventing any and all persons from doing business with him through fear of incurring the displeasure, persecution, and vengeance of the conspirators."¹⁷

"The exclusion of the employer from all communication with former customers and material men by threats of similar exclusion to the latter if dealings are continued."¹⁸

¹³ Quoted from Justin McCarthy's "England Under Gladstone," in *State v Glidden*, 55 Conn. 46, 8 Atl. 890, 3 Am. St. Rep. 23; and in part in *Crump v Com*, 84 Va. 927, 2 S. E. 620, 10 Am. St. Rep. 895.

¹⁴ *State v Glidden*, 55 Conn. 46, 8 Atl. 890, 3 Am. St. Rep. 23.

¹⁵ *Toledo etc. R. Co. v Pennsylvania Co.*, 54 Fed. 730, 738, 19 L. R. A. 387, 5 Inters. Com. Rep. 522. (Quoted with approval in *Buck Stove & Range Co. v American Federation of Labor*, D. C. App. 35 Wash. L. Rep. 797, 70 Alb. L. J. 8; *Beck v Railway Teamsters' Protective Union*, 118 Mich. 497, 77 N. W. 13, 74 Am. St. Rep. 44,

42 L. R. A. 407; *Dayton Mfg. Co. v Metal Polishers' Union*, 11 Ohio Dec. 643).

¹⁶ *Lohse Patent Door Co. v. Fuelle*, 215 Mo. 421, 114 S. W. 997, 1003, 22 L. R. A. N. S. 607.

¹⁷ *Crump v. Com*, 84 Va. 927, 2 S. E. 620, 627, 10 Am. St. Rep. 895. (Adopted in *Conspiracy*, 8 Cyc 639, and quoted with approval in *My Maryland Lodge v Adt*, 100 Md. 238, 59 Atl. 721, 68 L. R. A. 252; *Branson v Industrial Workers of the World*, (Nev.) 95 Pac. 354).

¹⁸ *Moore v Bricklayers' Union*, 10 Ohio Dec. (Reprint), 665, 674, 23 W. L. B. 48.

“A combination to harm one person by coercing others to harm him.”¹⁹

“An organized effort to exclude a person from business relations with others by persuasion, intimidation and other acts which tend to violence and by which they coerce him, through fear of resulting injury to submit to dictation in the management of his affairs.”²⁰

The definition first given is perhaps the best, but is not sufficiently comprehensive, in that it limits the acts by which the combination is to be rendered effective to threats of withdrawal of beneficial business intercourse, whereas such acts frequently consist in actual violence, or the intimidation which puts one in fear of bodily harm. Accordingly a boycott may be defined as a combination to cause a loss to one person by coercing others against their will, to withdraw from him their beneficial business intercourse, by threats that unless those others do so, the combination will cause similar loss to them, or by the use of such means as the infliction of bodily harm on them, or such intimidation as will put them in fear of bodily harm.

§ 68. Classes of boycotts.

Boycotts are of two classes—boycotts of capital, and boycotts of labor. The first kind of boycott is directed against those who employ labor. While the second is directed against laborers themselves. In the main, the same rules of law apply to both kinds of boycott, but the great number of cases on the subject makes a separate consideration of the two classes necessary.

§ 69. Elements of boycott.

Intimidation and coercion are essential elements of a boycott. It must appear that the means used are threatening and intended to overcome the will of others, and compel them to do or refrain from doing that which they would or would not otherwise have done.²¹

¹⁹ American Federation of Labor. v Buck Stove & Range Co. (D. C. App.), 37 Wash. L. Rep. 154.

²⁰ Brace Bros. v Evans, 5 Pa. Co. Ct. 163, 3 Ry. & Corp. L. J. 561; Casey v Cincinnati Typographical Union, 45 Fed. 135, 12 L. R. A. 193. And see Gray v Building Trades Council, 91 Minn. 171, 97 N. W. 663, 666, 103 Am.

St. Rep. 477, 63 L. R. A. 753.

²¹ Gray v Building Trades Council, 91 Minn. 171, 97 N. W. 663, 103 Am. St. Rep. 497, 60 L. R. A. 753; Barr v Essex Trades Council, 53 N. J. Eq. 101, 30 Atl. 881. And see Toledo etc. R. Co. v Pennsylvania Co., 54 Fed. 730, 739, 19 L. R. A. 387, 5 Inters. Com. Rep. 522.

What would constitute acts of this character depends, of course, upon the facts of each case. If the things done or the words spoken, are such that they will excite fear or a reasonable apprehension of damage, and so influence those for whom designed as to prevent them from freely doing what they desire, and the law permits, they may be restrained, and the courts will look beyond the mere letter of the act or word into its spirit or intent.²² While a boycott may be, and very frequently is accompanied by force, violence or threats of violence, it is not necessary that these acts should be present.²³ The boycott condemned by law is not alone that accompanied by violence and threats of violence, but that where the means are intended and naturally tend to overcome the will of others and compel them to do things which they otherwise would not do,²⁴ and the extent of this fear need not be abject, but only such as to overcome their judgment, or induce them not to do or to do that which they would have done or have left undone.²⁵ The anathemas of a secret organ-

²² *Barr v Essex Trades Council*, 53 N. J. Eq. 101, 30 Atl. 881.

²³ *California*.—*Jordahl v Hayda*, 1 Cal. App. 696, 82 Pac. 1079.

Connecticut.—*State v. Stockford*, 77 Conn. 227, 58 Atl. 769, 107 Am. St. Rep. 28; *State v Glidden*, 55 Conn. 46, 8 Atl. 890, 3 Am. St. Rep. 23.

District of Columbia.—*American Federation of Labor v Buck Stove and Range Co.*, 37 Wash. L. Rep. 154.

Illinois.—*Hey v Wilson*, 232 Ill. 389, 83 N. E. 928, 122 Am. St. Rep. 118, 16 L. R. A. N. S. 85.

Michigan.—*Beck v Railway Teamsters' Protective Union*, 118 Mich. 447, 77 N. W. 13, 74 Am. St. Rep. 44, 42 L. R. A. 407.

New Jersey.—*Barr v Essex Trades' Council*, 53 N. J. Eq. 101, 30 Atl. 881.

New York.—*Foster v Retail Clerks' International Protective Ass'n*, 78 N. Y. Suppl. 860, 39 Misc. 48; *Mathews v Shankland*, 56 N. Y. Suppl. 133, 25 Misc. 604; *People v Wilzig*, 4 N. Y.

Cr. Rep. 403; *People v Kostka*, 4 N. Y. Cr. Rep. 429.

Pennsylvania.—*Purvis v United Brotherhood of Carpenters & Joiners*, 214 Pa. St. 344, 63 Atl. 585, 112 Am. St. Rep. 272, 12 L. R. A. N. S. 242.

Vermont.—*State v Stewart*, 59 Vt. 273, 9 Atl. 559, 59 Am. Rep. 510.

United States.—*Loew v California Federation of Labor*, 139 Fed. 71; *Thomas v Cincinnati etc. R. Co.*, 62 Fed. 803, 4 Inters. Com. Rep. 786.

England.—*Temperton v Russell*, (1893) 1 Q. B. 715, 62 L. J. Q. B. 412, 69 L. T. 78.

²⁴ *Beck v Railway Teamsters' Protective Union*, 118 Mich. 497, 77 N. W. 428, 74 Am. St. Rep. 44, 42 L. R. A. 407; *Barr v Essex Trade Council*, 53 N. J. Eq. 101, 30 Atl. 881; *Purvis v United Brotherhood of Carpenters & Joiners*, 214 Pa. St. 344, 63 Atl. 585, 112 Am. St. Rep. 272, 12 L. R. A. N. S. 242.

²⁵ *Barr v Essex Trade Council*, 53 N. J. Eq. 101; 30 Atl. 881.

ization of men combined for the purpose of controlling the industry of others by a species of intimidation that works upon the mind rather than the body, are quite as dangerous, it has been said, and generally altogether more effective than acts of actual violence.²⁶

²⁶ State v Stewart, 59 Vt. 273, 9 Atl. Buck Stove & Range Co. (D. C. App.)
559, 59 Am. Rep. 710. And see 37 Wash. L. Rep. 154.
American Federation of Labor v

CHAPTER VII.

BOYCOTTS OF CAPITAL AND THE SUBSTANTIVE LAW RELATING THERETO.

- § 70. Lawful combinations sometimes described as boycotts.—Introductory statement.
- § 71. Combination to withhold patronage from persons against whom it is directed, or primary boycott.
- § 72. Persuading others to withhold patronage.
- § 73. Usual methods of boycott and means of carrying them into effect.—Introductory statement.
- § 74. Coercing workmen to quit a person's employ or not to enter his employ.
- § 75. Coercing a person's customers or prospective customers to withhold patronage from him.—In general.
- § 76. By threatening loss of patronage to them.
- § 77. By strikes or withholding labor or threats thereof.
- § 78. By imposing or threatening to impose fines.
- § 79. By use of or threats to use force or violence.
- § 80. Coercing dealers in material or products necessary to a person's business from selling to him.
- § 81. Coercing breach of contract by independent contractor.
- § 82. Sending out circulars asking public to boycott person named.
- § 83. Putting on unfair list.
- § 84. Considerations from which unlawfulness of boycotts deduced.—Rights invaded by boycott.—In general.
- § 85. Where the obtaining or retaining of labor necessary to one's business is prevented.
- § 86. Where one's customers or material men are prevented from dealing with him.
- § 87. Where breach of contract by independent contractor working for him is procured.
- § 88. Acts lawful for individual not necessarily lawful for combination.
- § 89. Boycott not justifiable on ground of competition.
- § 90. Boycott not justifiable because of ultimate purpose to advance interest of combination.
- § 91. Criminal liability.—Statement and application of rule.
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- § 94. Persons liable.
- § 95. Liability to injunctive process.—Jurisdiction to award injunction.—In general.
- § 96. As affected by criminality of acts sought to be enjoined.

- § 97. Mere apprehension of injury insufficient.
- § 98. Necessity for established business as a prerequisite to jurisdiction.
- § 99. Cessation of acts complained of as affecting right to injunction.
- § 100. Particular combinations liable to injunction.—Coercing workmen not to enter into or continue in one's employ.
- § 101. Coercing customers or prospective customers to withhold patronage.—Statement of rule.
- § 102. Illustrations of rule.
- § 103. Use of force or violence to cause withholding of patronage.
- § 104. Coercing dealers in material or products necessary to a person's business into not selling to him.
- § 105. Coercing breach of contract by independent contractor.
- § 106. Publication of libellous matter coercive in its nature.
- § 106a. Putting on unfair list.
- § 107. Who entitled to injunction.
- § 108. Against whom injunction awarded.
- § 109. Who are bound by injunction.

§ 70. Lawful combinations sometimes described as boycotts—Introductory statement.

It will prevent confusion, before entering upon a discussion of the law governing boycotts of capital to describe, and exclude from subsequent consideration, certain combinations sometimes described as boycotts, which are obviously not within the definition of boycotts given in the preceding chapter and which it is equally obvious are perfectly lawful.

§ 71. —Combination to withhold patronage from persons against whom it is directed, or primary boycott.

It is lawful for members of a union acting by agreement among themselves to cease to patronize a person against whom the concert of action is directed, when they regard it for their interest to do so.²⁷

²⁷ *California*.—Pierce v Stablemen's Union, 103 Pac. 323.

District of Columbia.—American Federation of Labor v Buck Stove & Range Company, 37 Wash. Law Rep. 157.

Illinois.—Hey v Wilson, 232 Ill. 389, 83 N. E. 928, 122 Am. St. Rep. 119, 16 L. R. A. N. S. 85.

Montana.—Lindsay v Montana Federation of Labor, 37 Mont. 264, 96 Pac. 127, 127 Am. St. Rep. 722.

New Jersey.—Alfred W. Booth &

Bro. v Burgess, 72 N. J. Eq. 181, 65 Atl. 233.

New York.—People v McFarlin, 89 N. Y. Suppl. 527, 43 Misc. 591; People v Kostka, 4 N. Y. Cr. Rep. 429; Mills v United States Printing Co., 91 N. Y. Suppl. 185, 99 App. Div. 605, (in which it was said: "If this be illegal, where can we draw the line so as to countenance association to insure united and therefore effective action to right what seems wrong, or to correct what seems an

This is the so-called "primary boycott,"²⁸ and in furtherance thereof it is lawful to circulate notices among the members of the union to cease patronizing one with whom they have a trade dispute,²⁹ and to announce their intention to carry their agreement into effect.³⁰ For instance if an employer of labor refuses to employ union men, the union has a right to say that its members will not patronize him.³¹ A combination between persons merely to regulate their own conduct and affairs is allowable, and a lawful

abuse, or to mark disapproval of some policy in the every day affairs of our social life? The protest of one under threat of abstention may be unheeded in view of the slightness of the penalty, when a like protest of many, with similar threat is effective; and only because the penalty is too great to pay. Lawful and concerted protest can regulate many things within the law without invoking paternal government.")

Pennsylvania.—*Patterson v Building Trades Council*, 11 Pa. Dist. Rep. 505; *Brace Bros. v Evans*, 5 Pa. Co. Ct. 163, 3 Corp. & Ry. L. J. 561.

United States.—*Toledo etc. R. Co. v Pennsylvania Co.*, 54 Fed. 730, 19 L. R. A. 387, 5 Inters. Com. Rep. 522; *Casey v Cincinnati Typographical Union*, 45 Fed. 135, 12 L. R. A. 193. See also *State v Glidden*, 55 Conn. 46, 8 Atl. 890, 3 Am. St. Rep. 23, (in which it was said that if boycotting is passive merely—a let-alone policy; a withdrawal of all business relations, intercourse and fellowship, it seems that there is nothing criminal in it); and the following cases which support the text by analogy, *Bohn Mfg. Co. v Hollis*, 54 Minn. 223, 55 N. W. 1119, 21 L. R. A. 337, 40 Am. St. Rep. 319; holding that it is lawful for a number of retail lumber dealers to form a voluntary association, by which they mutually agreed that they

would not deal with any manufacturer or wholesale dealer who should sell lumber directly to consumers not dealers at any point where a member of the association was carrying on a retail yard, and to provide in their by-laws that whenever any wholesale dealer or manufacturer made any such sale, their secretary should notify all members of that fact; *Ma-cauley v Tierney*, 19 R. I. 255, 33 Atl. 5, 37 L. R. A. 455, holding that an agreement among the members of an association not to deal with wholesale dealers who sold those not members of the association, and the sending of notices to that end to the wholesalers is not a conspiracy; the object of the combination, it was said is lawful and the means adopted for its accomplishment are not unlawful and the fact of combination is wholly immaterial.

²⁸ *Pierce v Stablemen's Union*, (Cal.) 103 Pa. 323.

²⁹ *Hey v Wilson*, 232 Ill. 389, 83 N. E. 928, 122 Am. St. Rep. 119, 16 L. R. A. N. S. 85.

³⁰ *Toledo etc. R. Co. v Pennsylvania Co.*, 54 Fed. 730, 19 L. R. A. 387, 5 Inters. Com. Rep. 522.

³¹ *Casey v Cincinnati Typographical Union*, 45 Fed. 135, 12 L. R. A. 193; *Brace Bros. v Evans*, 5 Pa. Co. Ct. 163, 3 Ry. & Corp. L. J. 561.

combination though others may be indirectly affected thereby.³² And the fact that the execution of the agreement may tend to diminish the profits of the party against whom such act is aimed does not render the participants liable to a prosecution for a criminal conspiracy,³³ or to a suit for injunction.³⁴ Even though he sustain financial loss, he will be without remedy, either in a court of law or a court of equity.³⁵ So long as the primary object of the combination is to advance its own interests and not to inflict harm on the person against whom it is directed, it is not possible to see how any claim of illegality could be sustained. Indeed, the analogy between combinations of the character under consideration and justifiable strikes is perfect. In the former, there is a withholding of patronage for the purpose of effecting the object of the combination, while in the latter there is a withholding of labor to effect such object, and the legality of the latter combination is nowhere questioned.³⁶ In this connection, it may be stated that the distinction between these combinations and boycotts within the definition adopted in the preceding chapter is clear and well-defined. Here the dispute is confined to two parties, the combination and the person against whom it is directed; while in boycotts as will subsequently be shown, the object of the combination is to coerce a third party having no interest in the dispute by threats of injury to him, to compel the person against whom the combination is directed to accede to its demands.

§ 72. —Persuading others to withhold patronage.

In a preceding chapter it has been shown that in aid of a lawful strike, it is lawful to use peaceable persuasion and argument to induce other workmen in the employ of the person against whom the strike has been declared, and not bound by contract for a definite term, to quit his service, or to induce other workmen not in his employ not to enter his service.³⁷ There is practically no dissent from this doctrine, and by parity of reasoning it is not unlawful for mem-

³² *Gray v Building Trades Council*, 91 Minn. 171, 97 N. W. 663, 103 Am. St. Rep. 477, 63 L. R. A. 753.

³³ *People v McFarlin*, 89 N. Y. Suppl. 597, 43 Misc. 591; *People v Kostka*, 4 N. Y. Cr. Rep. 429.

³⁴ *Pierce v Stablemen's Union*, (Cal.) 103 Pac. 324, and see cases cited in the first note in this section.

³⁵ *Mills v United States Printing Co.*, 91 N. Y. Suppl. 185, 99 App. Div. 605. And see *Alfred W. Booth & Bro. v Burgess*, 72 N. J. Eq. 181, 65 Atl. 233.

³⁶ See *supra*. Chapter IV *Strikes*.

³⁷ See *supra*. Chapter V *Acts in Furtherance of Strike*, Sections 60, 61.

bers of a union,³⁸ or their sympathizers,³⁹ to use in aid of a justifiable strike, peaceable argument and persuasion to induce customers of the person against whom the strike is in operation to withhold their patronage from him although their purpose in so doing is to injure the business of their former employer and constrain him to yield to their demands,⁴⁰ and the same rule applies where the employer has locked out his employees.⁴¹ These acts may be consummated by direct communication or through the medium of the press, and it is only when the combination becomes a conspiracy to injure by threats and coercion the property rights of another, that the power of the courts can be invoked.⁴² *The vital distinction between combinations of this character and boycotts, is that here no coercion is present, while as was heretofore shown,⁴³ coercion is a necessary element of a boycott.* In applying the principles stated it has been held that the issuance of circulars by members of a labor union notifying persons engaged in the trade, of controversies existing between such members and their employer and requesting such persons not to deal with the employer is not unlawful and will not be enjoined, where no intimidation or violence is used.⁴⁴ Especially is this true, where the employer is one of a combination of manufacturers who have entered into an agreement to discharge all persons in their employ, connected with defendants' union unless they recede from the demands made upon one of the employers' association. If defendants were

³⁸ J. F. Parkinson Co. v Building Trades Council, 154 Cal. 581, 98 Pac. 1027, 21 L. R. A. N. S. 550, (Per Shaw J.); Pierce v Stablemen's Union, (Cal.), 103 Pac. 323, 327; American Federation of Labor v Buck Stove and Range Company, 37 Wash. Law Rep. 154; Cohen v United Garment Workers, 72 N. Y. Suppl. 341, 35 Misc. 748; Mills v United States Printing Co., 91 N. Y. Suppl. 185, 99 App. Div. 605; Butterick Pub. Co. v Typographical Union No. 23, 100 N. Y. Suppl. 292, 50 Misc.1. And see supra as clearly sustaining this doctrine, sections 22, 69.

³⁹ Foster v Retail Clerks' Ass'n, 78 N. Y. Suppl. 860, 39 Misc. 48.

⁴⁰ J. F. Parkinson Co v Building

Trades Council, 154 Cal. 581, 98 Pac. 1027, 21 L. R. A. N. S. 550, (Per Shaw J.).

⁴¹ See Sinsheimer v United Garment Workers of America, 77 Hun. 225, 28 N. Y. Suppl. 321.

⁴² American Federation of Labor v Buck and Range Company, 37 Wash. Law Rep. 154.

⁴³ See Chapter VI, *Origin, Definition, Classes and Elements of Boycotts*, Section 69.

⁴⁴ Sinsheimer v United Garment Workers of America, 77 Hun. 225, 28 N. Y. Suppl. 321 (reversing 26 N. Y. Suppl. 152); Cohen v United Garment workers, 72 N. Y. Suppl. 341, 35 Misc. 748.

guilty of any violation of law, plaintiffs were equally implicated and on the principle that plaintiff must come into equity with clean hands, would have no right to the intervention of a court of equity.⁴⁵ So it has been held that the circulation by members of a labor union, acting in concert, of circulars stating certain facts and requesting every member and all other justly thinking persons not to buy goods from a person therein designated, and the putting up of posters having on them the words "Scab Labor! Don't Patronize!" (the complaining witness) is not a criminal conspiracy within a statute making it a misdemeanor for two or more persons to conspire to prevent another from exercising a lawful trade or calling or doing any other lawful act, by force, threats, intimidation, or by interfering or threatening to interfere with tools, implements or property used by such person. Labor organizations, it was said, have a right to appeal to the community and request that they withhold patronage from one who does not give fair compensation for labor.⁴⁶ On the other hand, if the strike is itself unlawful, the use of peaceable persuasion to induce customers or prospective customers to withhold their patronage is unlawful. If the object sought to be gained is unlawful it is immaterial what means may be used to effect it.⁴⁷ Thus it has been held that an injunction will issue against a labor union and its officers to restrain them from persuading or inducing persons or corporations not to deal with it because it employs non-union workmen or refuses to be unionized.⁴⁸ And even in case of a lawful strike, it would in most jurisdictions be unlawful to use peaceable persuasion to induce customers to break their contracts.⁴⁹

§ 73. Usual methods of boycott and means of carrying them into effect—Introductory statement.

The usual methods of boycott against an employer of labor, are:

1st. Coercing workmen to quit his employ, or not to enter his em-

⁴⁵ *Sinsheimer v United Garment Workers*, 77 Hun. 225, 28 N. Y. Suppl. 321.

⁴⁶ *People v Radt*, 15 N. Y. Co. Rep. 174, 71 N. Y. Suppl. 846.

⁴⁷ *Martin v McFall*, 65 N. J. Eq. 92, 55 Atl. 465. And see *Jensen v Cooks & Waiters' Union*, 39 Wash. 531, 81 Pac. 1069, 4 L. R. A. N. S.

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⁴⁸ *George Jonas Glass Co. v Glass Bottle Blowers' Ass'n*, 72 N. J. L. 653, 66 Atl. 953; *Martin v McFall*, 65 N. J. Eq. 92, 55 Atl. 465.

⁴⁹ See *Supra* Chapter V, *Acts in Furtherance of Strike*, Section 59, and *Infra* Chapter XVI, *Procuring Breach of Contract*.

ploy in order that he may be deprived of the element of labor essential to a going concern.

2nd. The coercing of his customers or prospective customers to withhold their patronage from him.

3rd. The coercing of persons manufacturing or dealing in materials or products necessary to the carrying on of his business not to furnish him with such materials or products.

4th. The coercing of independent contractors, who have engaged to do certain work for him, to break their contracts.

The means usually adopted to carry these boycotts into effect are:

1st. The use of force, violence or intimidation against workmen who would otherwise remain in or enter into his employ.

2nd. Causing or threatening to cause injury to the business of his customers or prospective customers, or of those who would otherwise furnish him the material or product necessary to the carrying on of his business, or of independent contractors who have engaged to do certain work for him, by the withholding from them of patronage of the members of the combination or of others persuaded or coerced by them into so doing.

3rd. Strikes or the withholding of labor, or threats to strike or withhold labor by members of the combination engaged in the boycott, from customers or prospective customers of the party boycotted, or from those manufacturing or dealing in the material or product essential to the carrying on of his business, or from independent contractors who have engaged to do certain work for him.

4th. The imposition of or threats to impose fines on his customers or prospective customers.

5th. The use of force or violence or threats thereof against his customers or prospective customers.

6th. The use of or threats to use force or violence to prevent others than members of the combination from continuing in or accepting employment from such customers or material men, or independent contractors.

7th. Sending out circulars asking the public to "boycott" the person with whom the combination has a trade dispute.

8th. Placing the person with whom the combination has a trade dispute on the "unfair" list.

9th. The coercion incidental to the imposition of or threats to impose penalties in accordance with the rules and by-laws of a labor

union, upon its members, to prevent them from patronizing or working for the party boycotted, or his customers, or materialmen or independent contractors who are under contract to do certain work for him. The matters involved in this ninth subdivision are considered in another chapter.⁵⁰

§ 74. —Coercing workmen to quit a person's employ or not to enter his employ.⁵¹

A combination to injure a person's business by preventing workmen in his employ from working for him, or to prevent workmen not in his employ but willing to accept employment from him from so doing, by the use of force, violence, or intimidation is an unlawful conspiracy.⁵² And it is not material that the workmen against whom such unlawful acts are directed are not under contract to work for him.⁵³ This fact could only be of importance where the means used to effect such purpose was persuasion or peaceable argument.⁵⁴ Acts of the kind under consideration have been characterized as being in effect the issuance by a self-constituted tribunal of an injunction unknown to any recognized law and which no court would have authority to grant.⁵⁵ While force and violence are

⁵⁰ See *Infra* Chapter XI, *Exercise by Union of Disciplinary Measures Against Its Members as Affecting Rights of Third Parties.*

⁵¹ And see *Infra*, this chapter, Sections 91, 93, 100.

⁵² *California*.—*Pierce v Stablemen's Union*, 103 Pac. 363.

Connecticut.—*State v Stockford*, 77 Conn. 227, 58 Atl. 769, 107 Am. St. Rep. 28.

Kentucky.—*Underhill v Murphy*, 117 Ky. 640, 78 S. W. 482, 111 Am. St. Rep. 262.

Maryland.—*My Maryland Lodge v Adt.*, 100 Md. 238, 56 Atl. 721, 68 L. R. A. 252.

Michigan.—*Beck v Railway Teamsters' Protective Union*, 118 Mich. 497, 77 N. W. 13, 74 Am. St. Rep. 421, 42 L. R. A. 407.

New York.—*Davis v Zimmerman*, 91 Hun. 409, 36 N. Y. Suppl. 303.

Ohio.—*New York etc. R. Co. v Wenger*, 9 Ohio Dec. (Reprint) 815.

Vermont.—*State v Stewart*, 59 Vt. 273, 9 Atl. 559, 59 Am. Rep. 710.

Wisconsin.—See *Badger Brass Mfg. Co. v Daly*, 137 Wis. 601, 119 N. W. 328.

United States.—*United States v Haggerty*, 116 Fed. 550; *Reinecke Coal Co. v Wood*, 112 Fed. 477; *Elder v Whitesides*, 72 Fed. 724. And see *Carter v Fortney*, 170 Fed. 465.

⁵³ *Vegelahn v Guntner*, 167 Mass. 92, 44 N. E. 1077, 57 Am. St. Rep. 458, 55 L. R. A. 72. And see *Frank v Herold*, 63 N. J. Eq. 443, 52 Atl. 152.

⁵⁴ See *Infra* Chapter XVI, *Procuring Breach of Contract.*

⁵⁵ *Otis Steel Co. v Local Union No. 218*, 110 Fed. 698.

very frequently used as the means of rendering this form of boycott effective, they are not necessary elements thereof. Intimidation will be sufficient. It is considered as unlawful as violence itself.⁵⁶ It is hardly feasible to lay down any general rule as to what constitutes intimidation. Each case depends on its own facts.⁵⁷ The term, it has been said, must receive a reasonable and sensible interpretation according to the circumstances of the cases as they arise from time to time.⁵⁸ It is perfectly clear however that, the intimidation which the law prohibits is not limited to threats of violence and bodily harm.⁵⁹ A menacing or threatening attitude towards those whom it is sought to coerce,⁶⁰ or a display of force,⁶¹ is intimidation though nothing is actually said or done. A simple request to do or not to do a thing made by one or more of a body of strikers under circumstances calculated to carry a threatening intimation for the purpose of preventing laborers from working is intimidation.⁶² Even persuasion and entreaty may be used in such a manner with such persistency and with such environments as to amount to intimidation.⁶³

⁵⁶ *George Jonas Glass Co. v Glass Blowers' Ass'n*, 72 N. J. Eq. 653, 66 Atl. 953; *Parker v. Bricklayers' Union No. 1*, 10 Ohio Dec. (Reprint) 458, 21 W. L. B. 223; *State Line etc. R. Co. v Brown*, 11 Pa. Dist. Rep. 509; *Union Pac. R. Co. v Ruef*, 120 Fed. 102.

⁵⁷ *Roger v Evarts*, 17 N. Y. Suppl. 264.

⁵⁸ Lord Coleridge in *Gibson v Lawson*, (1891) 2 Q. B. 545, 559, 65 L. T. 573.

⁵⁹ *Vegelahn v Guntner*, 167 Mass. 92, 44 N. E. 1077, 57 Am. St. Rep. 443, 35 L. R. A. 722; *People v Kostka*, 4 N. Y. Cr. Rep. 429; *O'Neil v Behanna*, 182 Pa. St. 236, 37 Atl. 843, 61 Am. St. Rep. 702, 38 L. R. A. 382; *Temple Iron Co. v Carmanoski*, 10 Kulp (Pa.) 37; *Allis-Chalmers Co. v Iron Moulders' Union*, 150 Fed. 155.

⁶⁰ *People v Kostka*, 4 N. Y. Cr. Rep. 419; *Foster v Retail Clerks' International Protective Ass'n*, 78 N. Y. Suppl. 860, 39 Misc. 48; *Iron Moulders' Union v Allis-Chalmers Co.*, 166 Fed. 45; 20 L. R. A. N. S. 315; *Union Pacific R. Co. v Ruef*, 120 Fed. 102.

⁶¹ *Humphreys Mfg. Co. v Matthias*, 12 Ohio Dec. N. P. 517; *State Line etc. R. Co. v Brown*, 11 Pa. Dist. Rep. 509; *Union Pac. R. Co. v Ruef*, 120 Fed. 102. And see *Hillenbrand v Building Trades Council*, 14 Ohio Dec. N. P. 628.

⁶² *Allis-Chalmers Co. v Iron Moulders' Union*, 150 Fed. 155.

⁶³ *Rogers v Evarts*, 17 N. Y. Suppl. 264; *Eureka Foundry Co. v Lehker*, 13 Ohio Dec. N. P. 398; *Goldfield Consolidated Mines Co. v Goldfield Miners' Union*, 159 Fed. 500; *Allis-Chalmers Co. v Reliable Lodge*, 111 Fed. 264; *Otis Steel Co. v Local Union No. 218*, 110 Fed. 678.

§ 75. —Coercing a person's customers or prospective customers to withhold patronage from him.—In general.

A combination of workmen formed for the purpose of coercing the customers or prospective customers of one against whom it is directed to withhold their patronage from him is almost universally held to be an unlawful conspiracy.⁶⁴ And liability for injury to one's business by coercing his patrons and customers to cease to patronize him, is not dependent on the fact that contract relations are thereby disrupted.⁶⁵ It would be just as injurious and destructive to his business to prevent him from obtaining customers with whom he could enter into contracts, as to interfere by unlawful threats and intimidation and cause existing relations to be broken. It is his business as a whole that the law protects and not some particular transaction involved therein.⁶⁶

§ 76. —By threatening loss of patronage to them.⁶⁷

According to the great weight of authority it is an unlawful conspiracy for a combination of workmen to combine to coerce one's customers or prospective customers to withhold their patronage from him by threats that in case they fail or refuse to do so, the combination will in turn cause injury to their business by causing loss of patronage.⁶⁸ And according to the weight of authority, the rule is

⁶⁴ See the four sections immediately following and see sections 91, 93, 101, 102, 103, 104.

⁶⁵ *Hey v Wilson*, 232 Ill. 389, 83 N. E. 928, 122 Am. St. Rep. 119, 16 L. R. A. N. S. 85; *Gray v Building Trades Council*, 91 Minn. 180, 97 N. W. 666, 103 Am. St. Rep. 477, 63 L. R. A. 753; *Jersey City Printing Co. v Cassidy*, 63 N. J. Eq. 759, 53 Atl. 230. And see *Lohse Patent Door Co. v Fuelle*, 215 Mo. 421, 114 S. W. 997, 22 L. R. A. N. S. 607.

⁶⁶ *Gray v Building Trades Union Council*, 91 Minn. 171, 97 N. W. 663, 103 Am. St. Rep. 497, 63 L. R. A. 753.

⁶⁷ See also *Infra* this chapter, sections 91, 93, 101, 102.

⁶⁸ *Connecticut*.—*State v Stockford*, 77 Conn. 227, 58 Atl. 769, 107 Am. St.

Rep. 28; *State v Glidden*, 55 Conn. 46, 8 Atl. 890, 3 Am. St. Rep. 23.

District of Columbia.—*Buck Stove & Range Co. v American Federation of Labor*, 35 Wash. L. Rep. 707, 70 Alb. L. J. 8, (affirmed in 37 Wash. L. Rep. 154).

Illinois.—*Hey v Wilson*, 232 Ill. 389, 83 N. E. 928, 122 Am. St. Rep. 119, 16 L. R. A. N. S. 85; *Piano & Organ Workers' International Union of America v Piano & Organ Supply Co.*, 124 Ill. App. 350.

Maryland.—*My Maryland Lodge v Adt*, 100 Md. 238, 59 Atl. 721, 68 L. R. A. 242.

Michigan.—*Beck v Railway Teamsters' Protective Union*, 118 Mich. 497, 77 N. W. 13, 42 L. R. A. 407, 74 Am. St. Rep. 441.

Minnesota.—*Gray v Building*

the same whether the threatened loss of patronage is to be caused by the use of coercion to induce others than those who are members of the combination to withhold their patronage from such customers,⁶⁹ or merely by the withholding of their patronage from them by the members of the combination,⁷⁰ and it has been said that acts of the character under consideration are not authorized by a statute

Trades Council, 91 Minn. 171, 97 N. W. 663, 103 Am. St. Rep. 497, 63 L. R. A. 753; *Trevor v Building Trades Council*, 91 Minn. 171, 97 N. W. 1118.

New Jersey.—*George Jonas Glass Co. v Glass Bottle Blowers' Ass'n*, 72 N. J. Eq. 653, 66 Atl. 953; *Barr v Essex Trade Council*, 53 N. J. Eq. 101, 30 Atl. 881. And see *Martin v McFall*, 65 N. J. Eq. 92, 55 Atl. 465; *Dressler v Sellers*, 27 N. J. L. 174.

Neveda.—*Branson v Industrial Workers of the World*, 95 Pac. 354.

New York.—*Mathews v Shankland*, 56 N. Y. Suppl. 123, 25 Misc. 604. See also *Butterick Pub. Co. v Typographical Union*, No. 6, 100 N. Y. Suppl. 292, 50 Misc. 1.

Ohio.—*Moores v Bricklayers' Union*, 10 Ohio Dec. (Reprint) 645, 23 W. L. B. 48.

Pennsylvania.—*Purvis v United Brotherhood of Carpenters & Joiners*, 214 Pa. St. 344, 63 Atl. 585, 12 L. R. A. N. S. 252, 112 Am. St. Rep. 272; *Brace Bros. v Evans*, 5 Pa. Co. Ct. 163, 3 Ry. & Corp. L. J. 561.

Virginia.—*Crump v Com*, 84 Va. 927, 6 S. E. 620, 10 Am. St. Rep. 895.

United States.—*Callan v Wilson*, 127 U. S. 540, 8 Sup. Ct. 1301, 32 L. ed. 223; *Rocky Mountain Bell Tel. Co. v Montana Federation of Labor*, 156 Fed. 810; *Loewe v Lawlor*, 139 Fed. 71; *Hopkins v Oxley Stave Co.*, 83 Fed. 912, 28 C. C. A. 99; *Casey v Cincinnati Typographical Union*, 45 Fed. 135, 12 L. R. A. 193; *Old Dominion Steamship Co. v McKenna*, 30

Fed. 48. See also *Seattle Brewing Co. v Hansen*, 144 Fed. 1011.

⁶⁹ See cases cited in preceding note.

⁷⁰ *Connecticut*.—*State v Glidden*, 55 Conn. 46, 3 Am. St. Rep. 23, 8 Atl. 890. See also *State v Stockford*, 77 Conn. 237, 58 Atl. 769, 107 Am. St. Rep. 28.

District of Columbia.—*Buck Stove & Range Co. v American Federation of Labor*, 35 Wash. L. Rep. 797, 70 Alb. L. J. 8.

Illinois.—*Hey v Wilson*, 232 Ill. 389, 83 N. E. 928, 122 Am. St. Rep. 119, 16 L. R. A. N. S. 85.

New Jersey.—*George Jonas Glass Co. v Glass Bottle Blowers' Ass'n*, 72 N. J. Eq. 653, 66 Atl. 593; *Barr v Essex Trade Council*, 53 N. J. Eq. 101, 30 Atl. 881.

New York.—*Mathews v Shankland*, 56 N. Y. Suppl. 123, 25 Misc. 604.

Virginia.—*Crump v Com*, 84 Va. 927, 6 S. E. 620, 10 Am. St. Rep. 895.

United States.—*Rocky Mountain Bell Telephone Co. v Montana Federation of Labor*, 156 Fed. 809; *Loewe v California State Federation of Labor*, 139 Fed. 71; *Hopkins v Oxley Stave Co.*, 83 Fed. 912, 28 C. C. A. 99; *Casey v Cincinnati Typographical Union*, 45 Fed. 135, 12 L. R. A. 193. And see *Callan v Wilson*, 127 U. S. 540, 8 Sup. Ct. 1301, 32 L. Ed. 223.

See also as sustaining this view, analogous cases in the following section.

making it lawful for persons to combine to persuade by peaceable means any person or persons to enter into any combination for or against leaving or entering into the employment of any person.⁷¹ There are however a few decisions of very recent date which are not in accord with those just cited, the view taken being that a combination of workmen who have a trade dispute with their employer, may request of another that he withdraw his patronage from the employer and may use the moral intimidation and coercion of threatening loss of patronage to him, if he refuse to do so.⁷² In one of these cases it was said: The California court recognizes no distinction between the primary and secondary boycott. Each rests upon the right of the union to withdraw its patronage from any employer and to induce by fair means any and all persons to do the same, and in exercise of those means, as the unions would have the unquestioned right to withhold their patronage from a third person who continued to deal with their employer, so they have the unquestioned right to notify such third person that they will withdraw their patronage if he continues so to deal.⁷³ The reasons hereinafter considered,⁷⁴ for holding boycotts unlawful, make it highly improbable that the doctrine established by the few isolated cases holding them lawful will ever obtain any permanent foothold in the jurisprudence of this or any other country.

§ 77. — —By strikes or withholding of labor or threats thereof.⁷⁵

While the decisions are not entirely harmonious, the great weight of authority is to the effect that organized labor's right of coercion and compulsion by strikes or withholding labor or threats thereof is limited to strikes or withholding of labor or threats thereof against persons with whom the combination has a trade dispute.⁷⁶ In consequence the use of such means against one's customers or prospec-

⁷¹ *Barr v Essex Trade Council*, 53 N. J. Eq. 101, 30 Atl. 881.

⁷² *Pierce v Stablemen's Union*, (Cal.) 103 Pac. 324; *Lindsay v Montana Federation of Labor*, 37 Mont. 264, 96 Pac. 127, 127 Am. St. Rep. 722. For other cases supporting this doctrine by analogy see cases cited in notes 81, 82, 83, 84, of the following section.

⁷³ *Pierce v Stablemen's Union* (Cal.), 103 Pac. 323, 327.

⁷⁴ See *Infra* this chapter, sections 84 to 89 inclusive.

⁷⁵ See also *Infra* this chapter, section 93.

⁷⁶ *Pickett v Walsh*, 192 Mass. 572, 78 N. E. 753, 116 Am. St. Rep. 272, 6 L. R. A. N. S. 1007. And see cases cited in subsequent notes in this section.

tive customers in order to coerce them to compel him to comply with demands made on him by the combination, is an unjustifiable interference with the rights of such customers or prospective customers.⁷⁷ An attempt to injure one person because he refuses to injure another, is without just cause or excuse and is unlawful even though the injury is inflicted merely by concerted quitting of employment.⁷⁸ And it is likewise held an unjustifiable interference with the business of the person whom it is thus sought to coerce into compliance with the demands of the combination.⁷⁹ There are however decisions which are squarely in conflict with the views herein expressed. In a recent decision of the Supreme Court of California it was held that it was lawful for a union to notify customers of an employer of their members against whom a strike was in progress that all members of the union to which they belonged would refuse to handle any material purchased from their employer.⁸⁰ In this case it was said (a majority of the judges concurring), that there is no material distinction so far as the lawfulness of the act is con-

⁷⁷ *Thomas v Cincinnati etc. R. Co.* 62 Fed. 803, 4 Inters. Com. Rep. 788; *United States v Cassidy*, 67 Fed. 698.

⁷⁸ *Thomas v Cincinnati etc. R. Co.*, 62 Fed. 803, 820, 4 Inters. Com. Rep. 788.

⁷⁹ *Illinois*.—*Purington v Hinchliff*, 219 Ill. 156, 76 N. E. 47, 109 Am. St. Rep. 322, 20 L. R. A. N. S. 824; *Piano & Organ Workers' Union v Piano & Organ Supply Co.*, 124 Ill. App. 352.

Minnesota.—*Gray v Building Trades Council*, 91 Minn. 171, 97 N. W. 663, 103 Am. St. Rep. 477, 63 L. R. A. 753; *Trevor v Building Trades Council*, 91 Minn. 171, 97 N. W. 1118.

Missouri.—*Lohse Patent Door Co. v Fuelle*, 215 Mo. 421, 114 S. W. 997; 22 L. R. A. N. S. 607; *Charles A. Olcott Planing Mill Co. v Fuelle*, 114 S. W. 1093.

New Jersey.—*Alfred W. Booth & Bro. v Burgess*, 72 N. J. Eq. 181, 65 Atl. 226.

Ohio.—*Moores v Bricklayers' Union*

23 W. L. B. 48, 10 Ohio Dec (Reprint) 645.

Pennsylvania.—*Purvis v United Brotherhood of Carpenters & Joiners*, 214 Pa. St. 344, 63 Atl. 585, 12 L. R. A. N. S. 252, 112 Am. St. Rep. 272; *Patterson v Building Trades Council*, 11 Pa. Dist. Rep. 500.

United States.—*Shine v Fox Bros. Mfg. Co.*, 156 Fed. 237, 86 C. C. A. 311; *United States v Cassidy*, 67 Fed. 698; *Thomas v Cincinnati etc. R. Co.* 62 Fed. 803, 4 Inters. Com. Rep. 788.

England.—*Quinn v Leatham*, (1901) A. C. 495, 70 L. J. P. C. 76, 85 L. T. 289, 50 W. R. 139, 65 J. P. 708; *Temperton v Russell*, (1893) 1 Q. B. 715, 62 L. J. Q. B. 412, 69 L. T. 78.

Canada.—*Metallic Roofing Co. v Jose*, 12 Ont. L. Rep. 200 (reversed on other grounds in (1908) A. C. 514).

⁸⁰ *J. F. Parkinson Co. v Building Trades Council*, 154 Cal. 581, 98 Pac. 1027, 21 L. R. A. N. S. 550.

cerned between the withholding of labor from A with whom the union has a dispute arising out of his treatment of union labor, and withholding it from B against whom they have no other grievance than that he is assisting A by trading with him. That their motive in withholding it from B is to induce A to accede to their terms is immaterial even if it be conceded that there is anything wrong in such motive.⁸¹ And in another opinion it was said that one cannot be said to be 'intimidated' or 'coerced' in the sense of compulsion by being induced to forego business relations with A rather than lose the benefit of more profitable relations with B.⁸² So in a decision of the Supreme Court of South Carolina it was held that where a dealer in raw material refused to hire union men only and discharge non-union men in his employ, members of the union might lawfully publish a notice in a newspaper that because of such dealers' attitude toward organized labor, he has been declared unfair and that no union carpenter will work on any material from his shop after a designated date. Such a combination it was said is not a boycott within the ordinary meaning of that term.⁸³

§ 78. — —By imposing or threatening to impose fines.⁸⁴

The imposition by a combination of workmen of fines on a person's customers for buying his goods, for the purpose of coercing them to withhold patronage from him, is unlawful,⁸⁵ and likewise threats to impose fines with that purpose in view would be unlawful.

§ 79. — —By use of or threats to use force or violence.⁸⁶

A combination of workmen for the purpose of using or threatening to use force or violence in order to compel his customers to withhold their patronage from him is an unlawful conspiracy.⁸⁷

⁸¹ Angelotte J. in *J. F. Parkinson Co. v Building Trades Council*, 154 Cal. 581, 98 Pac. 1027, 1039, 21 L. R. A. N. S. 550.

⁸² Sloss J. on *J. F. Parkinson Co. v Building Trades Council*, 154 Cal. 581, 98 Pac. 1027, 1039, 21 L. R. A. N. S. 550.

⁸³ *State v Van Pelt*, 136 N. C. 633, 49 S. E. 177, 68 L. R. A. 760.

⁸⁴ See also *Infra* this chapter, section 93.

⁸⁵ *Purington v Hinchliffe*, 219 Ill. 47, 76 N. E. 47, 109 Am. St. Rep. 322, 2 L. R. A. N. S. 824.

⁸⁶ See also *Infra* this chapter, sections 91, 103.

⁸⁷ *Beck v Railway Teamsters' Protective Union*, 118 Mich. 497, 42 L. R. A. 407, 74 Am. St. Rep. 44; *Butterick Pub. Co. v Typographical Union No. 6*, 100 N. Y. Suppl. 292, 50 Misc. 1. And see *Jordahl v Hayda*, 1 Cal. App. 696, 82 Pac. 1079.

§ 80. —Coercing dealers in material or products necessary to a person's business from selling to him.⁸⁸

It is an unlawful conspiracy for a combination of workmen to threaten persons dealing in a certain material or product that the combination will cause strikes in their places of business if they sell their material or product to one to whose business it is necessary, and against whom the boycott is directed.⁸⁹

§ 81. —Coercing breach of contract by independent contractor.⁹⁰

A combination of workmen the object of which is to compel one with whom they have a trade dispute to accede to their demands by coercing independent contractors who have engaged to do certain work for him, by threats of strikes in their places of business,⁹¹⁻⁹² or of other acts injurious to or destructive of their business,⁹³ has been held to constitute an unlawful conspiracy.

§ 82. —Sending out circulars asking public to "boycott" persons named.

The word "boycott" in itself has been said to imply a threat,⁹⁴ and it has been held that the distribution of circulars containing a notice to "boycott" a firm designated, is itself an act of intimidation, and imports that customers of the firm will be treated in like manner, if they continue to patronize him.⁹⁵

§ 83. —Putting on "unfair" list.

As in nearly all questions arising out of trade disputes there is some conflict of authority as to whether the publication of a person as "unfair" to organized labor, is lawful. Now if the publication

⁸⁸ See also *Infra* this chapter, section 93.

⁸⁹ *Moores v Bricklayers' Union*, 10 Ohio Dec. (Reprint) 648; 23 W. L. B. 48; *Temperton v Russel*, (1893) 1 Q. B. 715, 62 L. J. Q. B. 412, 69 L. T. 78.

⁹⁰ See also *Infra* this chapter, section 93.

⁹¹⁻⁹² *Beattie v Callanan*, 67 N. Y. App. Div. 558, 73 N. Y. Suppl. 518. And see *Pickett v Walsh*, 192 Mass. 572, 78 N. E. 753, 116 Am. St. Rep. 272, 6 L. R. A. N. S. 1067.

⁹³ *Doremus v Hennessey*, 176 Ill. 608,

54 N. E. 924, 68 Am. St. Rep. 203, 43 L. R. A. 797; and see *Enterprise Foundry Co. v Iron Moulders' Union*, 149 Mich. 311, 112 N. W. 685, 13 L. R. A. N. S. 548.

⁹⁴ *Brace Bros. v Evans*, 5 Pa. Co. Ct. 163, 3 Ry. & Corp. L. J. 561; *Dayton Mfg. Co. v Metal Polishers' Union*, 11 Ohio Dec. 643.

⁹⁵ *Beck v Railway Teamsters' Protective Union*, 118 Mich. 497, 77 N. W. 13, 74 Am. St. Rep. 44, 42 L. R. A. 407. And see *Dayton Mfg. Co. v Metal Polishers' Union*, 11 Ohio Dec. 643.

was made in furtherance of some unlawful act, as for instance an unlawful strike, it would be unlawful though not constituting a boycott, for the obvious reason that means not unlawful in themselves cannot be employed to effect an unlawful object," and it has accordingly been held that where workmen strike in violation of their contracts of employment, in order to secure something to which they are not entitled to under the contract, they are guilty of an unjustifiable interference with the employer's business, and that the placing of the employer on the "unfair" list is unlawful." Let it be supposed, however, that the publication is in furtherance of a lawful strike, or of some other act that the law regards as proper. In a jurisdiction where it is held lawful for a combination to withhold or threaten to withhold beneficial business relations from one's customers for the purpose of compelling them to withhold their patronage from him, such publication would of course be lawful, even though it were construed as importing a threat by the combination publishing it, that its members would withhold beneficial business relations from any one having business relations with the person published as unfair.⁹⁸ But in the great majority of jurisdictions, such a threat is held unlawful, and in these jurisdictions the legality of the publication must depend on whether it is to be construed merely as a request that business relations be withheld from the person against whom the publication is designed to operate, or as a threat that those disregarding it, will in turn be made to suffer by the withholding from them of business relations by those making the publication. If the publication is to be regarded as a request merely, it is not unlawful. As shown in another section, workmen who have a legitimate grievance against their employer may use peaceable persuasion and argument to induce his customers or prospective customers to withhold their patronage from him in order to force him to adjust such grievance.⁹⁹ But according to one decision the word "unfair" when used about a person in a circular dis-

⁹⁸ See *A. R. Barnes & Co. v Chicago Typographical Union*, 232 Ill. 402, 83 N. E. 932, 122 Am. St. Rep. 129, 14 L. R. A. N. S. 1150.

⁹⁹ *Reynolds v Davis*, 198 Mass. 294, 84 N. E. 457, 17 L. R. A. N. S. 162.

⁹⁹ *J. F. Parkinson Co v Building*

Trades Council, 154 Cal. 581, 98 Pac. 1027, 21 L. R. A. N. S. 550; *Lindsay v Montana Federation of Labor*, 37 Mont. 264, 96 Pac. 127, 127 Am. St. Rep. 722. And see *State v Van Pelt*, 136 N. C. 633, 49 S. E. 177, 68 L. R. A. 760.

⁹⁹ See *supra* this chapter, section 72.

tributed to those dealing in the kind of product which he manufactures has a distinct meaning "almost in the nature of a command" not to deal with him; and that the issuing of such circulars is unlawful.¹ And in another, it has been held that where the publication in a labor journal of the name of a manufacturer as "unfair" does not stand alone, unconnected with any other conduct preceding or following it, but is one of several steps in a conspiracy to injure the manufacturers and has a definite meaning and instruction to the members of the union and is the basis for conduct on their part which interferes with the manufacturer's right to freedom to trade with whom he pleases it is unlawful.² It is not believed, however, that the word "unfair" necessarily imports a threat. If it is shown by satisfactory evidence that such is its effect it is unlawful,³ though no direct threats are used in connection therewith,⁴ but otherwise it is not. What is believed to be the correct rule has been stated in a decision of the Supreme Court of Minnesota as follows: "Whether a publication of the character under consideration would in any case amount to a threat or intimidation must be determined from all the facts and circumstances of each case. Such notice might have special significance in a particular case, and have no meaning in another, and in the absence of any showing that it was intended as a threat or intimidation, an injunction against the further giving of such notices should not be granted."⁵

§ 84. Considerations from which unlawfulness of boycotts deduced—Rights invaded by boycotts.—In general.

The right invaded by a boycott is a property right. A person's business, aside from the money, chattels, plant, or other tangible

¹ *Seattle Brewing Co. v Hansen*, 144 Fed. 1011.

² *Buck Stove & Range Co. v American Federation of Labor* (Dist. Col.) 35 Wash. L. Rep. 797, 70 Alb. L. J. 8, (affirmed in 37 Wash. L. Rep. 154).

³ *Hey v Wilson*, 232 Ill. 389, 83 N. E. 928, 122 Am. St. Rep. 119, 16 L. R. A. N. S. 85; *Gray v Building Trades Council*, 91 Minn. 171, 97 N. W. 663, 103 Am. St. Rep. 497, 63 L. R. A. 753.

⁴ *Hey v Wilson*, 232 Ill. 389, 83 N. E. 928, 122 Am. St. Rep. 119, 16 L. R. A. N. S. 85, in which it was said that if notices given have the natural effect of exciting reasonable fear and apprehension of injury to the business on the part of those to whom they are given, it is immaterial that they are not accompanied by direct threats.

⁵ *Gray v Building Trades Council*, 91 Minn. 171, 97 N. W. 663, 103 Am. St. Rep. 497, 63 L. R. A. 753.

property employed therein, is, in every sense of the word property, and as such is, if lawful, entitled to protection from all unlawful interference, whether the object of that interference be to compel customers or prospective customers to refrain from patronizing him, or persons dealing in material or products necessary to his business to refrain from furnishing him therewith, or to restrain workmen from furnishing him with the labor necessary to such business.*

**District of Columbia*.—Buck Stove & Range Co. v Am. Fed. of Labor, 35 Wash. L. Rep. 797, 70 Alb. L. J. 8.

Kentucky.—Underhill v Murphy, 117 Ky. 640, 78 S. W. 482, 111 Am. St. Rep. 262, in which it was said: "when a man has, by years of toil and fair dealing with his customers, built up a valuable business and good will, he is as much entitled to protection by the law in this species of property as in the home that shelters him, or the coat that protects him from the winter's cold."

Michigan.—Beck v Railway Teamsters' Protective Union, 118 Mich. 497, 73 N. W. 13, 74 Am. St. Rep. 44, 42 L. R. A. 407.

Minnesota.—Gray v Building Trades Council, 91 Minn. 180, 97 N. W. 666, 103 Am. St. Rep. 477, 63 L. R. A. 753.

Missouri.—Lohse Patent Door Co. v Fuelle, 215 Mo. 421, 114 S. W. 997, 22 L. R. A. N. S. 607.

New Jersey.—George Jonas Glass Co. v Glass Bottle Blowers' Ass'n of United States and Canada, 72 N. J. Eq. 653, 66 Atl. 953; Barr v Essex Trade Council, 53 N. J. Eq. 101, 30 Atl. 881, in which it was said: "One's business of publishing a paper, with the incidents of its circulation and advertising, is as much his property as the type and presses upon which the paper was printed. A harmful interference with the circulation and the advertising in the

paper is therefore an injury to his property;" Frank v Herold, 63 N. J. Eq. 443, 52 Atl. 152, in which it was said that in preventing operatives from continuing to work for complainant, a manufacturer, defendants inflicted an injury upon complainant in respect to his private rights, precisely the same as they would if they broke, interfered with or clogged the engine that drove his machinery."

New York.—New York Central Iron Works v Brennan, 105 N. Y. Suppl. 865; Davis v Zimmerman, 91 Hun. 489, 36 N. Y. Suppl. 303.

Ohio.—Ohio Foundry Co. v Lecker, 13 Ohio Dec. N. P. 398.

Oregon.—Longshore Printing and Publishing Co. v Howell, 26 Ore. 527, 38 Pac. 547, 28 L. R. A. 464, 46 Am. St. Rep. 640.

Pennsylvania.—Purvis v United Brotherhood of Carpenters & Joiners, 214 Pa. St. 348; 63 Atl. 585, 112 Am. St. Rep. 272, 12 L. R. A. N. S. 242; Brace Bros. v Evans, 5 Pa. Co. Ct. 163, 3 Ry. & Corp. L. J. 561.

United States.—Goldfield Consolidated Mines Co. v Goldfield Miners' Union, 159 Fed. 500; Sailors Union of the Pacific v Hammond, 156 Fed. 450, in which it was said: "The property of one who operates vessels is not only the vessels, but the business of carrying freight and passengers without which the vessels would lose their value. The right to operate vessels and to conduct business, is

The right to conduct a business, and the right to the protection of such business from unlawful interference is not only a common law right,⁷ but is also a right guaranteed by the organic law of state,⁸ and federal government,⁹ and it can be taken away only by the law of the land, or interfered with, or the enjoyment thereof modified, only by lawful regulations adopted as necessary for the general public welfare.¹⁰

§ 85. — —Where the obtaining or retaining of labor necessary to one's business is prevented.

Speaking more specifically, where the boycott is to coerce workmen in a person's employ to cease working for him, or others not in his employ not to accept employment from him, the primary right assailed is the right of an employer to a free labor market, that is the right to have labor flow freely to him,¹¹ and to the continuing services of those who accepted employment at will until such services are terminated by the free act of one or the other party to the employment.¹² In other words it is the right to determine whom he shall employ, and to employ those who are willing to work for him upon such terms as may be mutually agreed upon, without undue interference on the part of others.¹³ This right, it has been said,

as much property as are the vessels themselves. All rights which are incident to the use, enjoyment and disposition of tangible things are property;" *United States v Haggerty*, 116 Fed. 510; *American Steel & Wire Co. v Wire Drawers' & Die Makers' Union*, 90 Fed. 608. And see *Hopkins v Oxley Stave Co.* 83 Fed. 912, 28 C. C. A. 99.

⁷ *L. D. Wilcutt & Sons Co. v Driscoll*, 200 Mass. 110, 85 N. E. 897.

⁸ *Underhill v Murphy*, 117 Ky. 640, 78 S. W. 482, 111 Am. St. Rep. 262; *Gray v Building Trades Council*, 91 Minn. 180, 97 N. W. 666, 103 Am. St. Rep. 477, 63 L. R. A. 753; *Barr v Essex Trades Council*, 53 N. J. Eq. 101, 30 Atl. 881; *New York Central Iron Works v Brennan*, 105 N. Y. Suppl. 865.

⁹ *New York Central Iron Works v*

Brennan, 105 N. Y. Suppl. 865.

¹⁰ *Gray v Building Trades Council*, 91 Minn. 171, 97 N. W. 663, 103 Am. St. Rep. 977, 63 L. R. A. 750.

¹¹ *Jersey City Printing Co. v Cassidy*, 63 N. J. Eq. 759, 53 Atl. 230; *Atkins v W. & A. Fletcher Co.*, 65 N. J. Eq. 658, 55 Atl. 1074; *L. D. Wilcutt & Sons Co. v Driscoll*, 200 Mass. 110, 85 N. E. 897; *Iron Moulders' Union v Allis-Chalmers Co.* 166 Fed. 45, 20 L. R. A. N. S. 315.

¹² *Iron Moulders' Union v Allis-Chalmers Co.*, 166 Fed. 45, 50, 20 L. R. A. N. S. 315.

¹³ *Maryland*.—*My Maryland Lodge v Adt*, 100 Md. 238, 59 Atl. 721, 68 L. R. A. 252.

Massachusetts.—*Vegelahn v Guntner*, 157 Mass. 92, 44 N. E. 1077, 57 Am. St. Rep. 443, 35 L. R. A. 722.

Michigan.—*Beck v Railway Team-*

must be maintained or personal liberty is a delusion.¹⁴ It has sometimes been referred to as a "probable expectancy,"¹⁵ and its distinguishing feature is that it is an interest which one person has in the freedom of another.¹⁶ The right to buy labor and the right to sell labor are recognized by the law, and their enjoyment is greatly impaired or destroyed unless freedom in the labor market on both sides of the labor market is maintained.¹⁷ This right of the employer to a free labor market, like the vast majority of rights in a highly complex civilization is by no means absolute. This is shown in another chapter.¹⁸ But while it is not absolute, its status is such that it will be protected from the boycott. The law undertakes to insure to an employer of labor, not only that he may employ whom he pleases, but that all who wish to be employed by him may enter into and remain in such employment freely, without threats of harm, without unreasonable molestation and annoyance from the words, actions or other conduct of any other persons acting in combination. And the right under consideration must be recognized to the same extent by courts of law and equity and protected by substantially the same rules.¹⁹

sters' Protective Union, 118 Mich. 497, 77 N. W. 13, 74 Am. St. Rep. 44, 42 L. R. A. 407.

New Jersey.—Barr v Essex Trades Council, 53 N. J. Eq. 101, 30 Atl. 801.

New York.—New York Cent. Iron Works v Brennan, 105 N. Y. Suppl. 865; Master Stevedores Ass'n v Walsh, 2 Daly 1.

Ohio.—State v Bateman, 10 Ohio Dec 68.

Pennsylvania.—Purvis v United Brotherhood of Carpenters & Joiners, 214 Pa. St. 344, 63 Atl. 585, 12 L. R. A. N. S. 242, 112 Am. St. Rep. 272; Temple Iron Co. v Carmanoski, 10 Kulp (Pa.) 39.

Virginia.—Crump v Com, 84 Va. 941, 6 S. E. 620, 10 Am. St. Rep. 895.

United States.—United States v Kane, 23 Fed. 748.

¹⁴ My Maryland Lodge v Adt, 100 Md. 238, 59 Atl. 721, 68 L. R. A. 252; Beck v Railway Teamsters' Protective Union, 118 Mich. 497, 73 N. W. 13, 74 Am. St. Rep. 44, 42 L. R. A. 407.

¹⁵ Jersey City Printing Co. v Cassidy, 63 N. J. Eq. 759, 53 Atl. 230.

¹⁶ Jersey City Printing Co. v Cassidy, 63 N. J. Eq. 759, 53 Atl. 230; Atkins v W. & A. Fletcher Co., 65 N. J. Eq. 658, 55 Atl. 1074.

¹⁷ Atkins v W. & A. Fletcher Co. 65 N. J. Eq. 658, 55 Atl. 1074.

¹⁸ See *Infra* Chapter XI, *Exercise by Union of Disciplinary Measures Against Its Members as Affecting Rights of Third Parties*, Section 150.

¹⁹ Jersey City Printing Co. v Cassidy, 63 N. J. Eq. 759, 53 Atl. 230.

§ 86. — —Where one's customers or materialmen are prevented from dealing with him.

Similarly where the effect of the boycott is to coerce customers or prospective customers into withholding patronage from the party boycotted, or dealers in material or products necessary to his business from furnishing them to him, the primary right assailed, is his right to a free market for the purchase and sale of commodities, that is, to have such customers, materialmen, etc., left free to deal with him or not as they may elect.²⁰ The tort committed by the violation of the right consists in coercing the market, i. e., interfering with the right of the particular dealer to enjoy the advantages of freedom to deal with him on the part of all who may voluntarily desire to do so.²¹⁻²² As in the case of the free labor market, the particular right under consideration must be recognized to the same extent by courts of law and courts of equity, and protected by substantially the same rules.²³

§ 87. — —Where breach of contract by independent contractor working for him is procured.

Where a breach of contract by an independent contractor with the party boycotted is induced, the specific right invaded is a property interest in the contract, which he is entitled to have protected against any intentional interference by third persons not acting in the exercise of an equal or superior right.²⁴

§ 88. — —Acts lawful for individual not necessarily lawful for combination.

As was shown in a previous chapter, the great weight of authority is to the effect that while the act of an individual may not be unlawful, yet the same act when committed by a combination of individuals may be unlawful both in the sense of rendering the members of the combination liable to a criminal prosecution and to an action on the case for damages or to injunctive process, and that too, though the act for the commission of which the combination was formed is one which an individual would have the absolute

²⁰ Alfred W. Booth & Bro. v Burgess, 72 N. J. Eq. 181, 65 Atl. 226; Barr v Essex Trade Council, 53 N. J. Eq. 101, 30 Atl. 801.

²¹⁻²² Alfred W. Booth & Bro. v Burgess, 72 N. J. Eq. 181, 65 Atl. 226;

Jersey City Printing Co. v Cassidy, 63 N. J. Eq. 759, 53 Atl. 233.

²³ Jersey City Printing Co. v Cassidy, 63 N. J. Eq. 759, 53 Atl. 455.

²⁴ See generally *Infra* Chapter XVI, *Procuring Breach of Contract*.

right to commit. The basis of this doctrine is that an organized body of men working together can produce results very different from those which can be produced by an individual without assistance, because of the greater power of coercion on the part of the combination, and such combination may make dangerous and oppressive, that which if it proceeded from a single person would be otherwise, and the very fact of the combination may show that the object is simply to do harm and not to exercise one's own just rights. The result of this greater power of coercion on the part of a combination is that what is lawful for an individual is not the test of what is lawful for a combination of individuals. The true test is the motive for combining or what amounts to the same thing the nature of the object to be attained as a consequence of the act. Where an act would be lawful if done by an individual, it will be lawful if done by a combination provided they have no unlawful object in view, but such combinations are unlawful, though the acts when done by an individual would be innocent, when the acts are committed with malice, i. e., with the intention to injure another or the public without just cause or excuse. And just cause or excuse exists only where the injury inflicted is the means to some end legitimately desired, and incidental thereto, and is not the result of a specific intent and immediate purpose of injury to others that benefit may ultimately come to the members of the combination. It is entirely wanting, when the immediate purpose of the combination is to inflict injury on others, and the benefit, if any, to result to the combination is indirect or remote.²⁵ In a decision which attracted widespread attention, it was contended that it cannot be unlawful for a combination of members to do what each acting separately may do and that therefore the combination may lawfully discontinue or threaten to discontinue business intercourse with a given firm and all who handle its product. This contention was not sustained. The court (by Mr. Justice Robb) said: "To admit the soundness of this contention is to give legal support and standing to an engine of harm and oppression utterly at variance with the spirit and theory of our institutions, place the weak at the mercy of the strong, foster monopoly, permit an unwarranted interference with the natural course of trade, and deprive the citizen of the freedom guaranteed him by the Constitu-

²⁵ See *supra* Chapter IV, *Strikes*, Sections 28, 29.

tion. The loss of the trade of a single individual ordinarily affects a given dealer very little. Being discriminating, the purchasing public, if left free to exercise its own judgment, will not act arbitrarily or maliciously, but will be controlled by natural considerations. But a powerful combination to boycott immediately deflects the natural course of trade and ruin follows in its wake because of the unlawful design of the conspirators to coerce or destroy the object of their displeasure. In other words, it is the conspiracy and not natural causes that is responsible for the result. From time immemorial the law has frowned upon combinations formed for the purpose of doing harm, and we think public policy demands that such a combination as we have found to exist in this case be declared unlawful. As was said by Mr. Chief Justice Fuller of a similar combination: 'The combination charged falls within the class of restraints of trade aimed at compelling third parties and strangers involuntarily not to engage in the course of trade except on conditions that the combination imposes; and there is no doubt (to quote from the well-known work of Chief Justice Erle on Trade Unions) 'at common law every person has individually, and the public has collectively, a right to require that the course of trade should be kept free from unreasonable obstruction. *Loewe v Lawlor*, 208 U. S. 294.' ''²⁶

§ 89. —Boycott not justifiable on ground of competition.

A boycott instituted by a union is not justifiable on the ground that it is legitimate trade competition. The competition which the law upholds is honest competition, not a malicious attempt to injure another.²⁷ Thus it has been held that a trade council composed of delegates of several labor unions, the only "business" of which is the furnishing to tradesmen of cards certifying that they are proper persons for the members of labor unions to deal with, is not engaged in business and cannot justify as legitimate competition in business, its acts in ordering members of unions affiliated with it to cease buying a newspaper with which one of the unions has a dispute, or to cease patronizing those who advertise

²⁶ *American Federation of Labor v Buck Stove and Range Co.* (D. C.) 37 Wash. L. Rep. 154, 161, 162.

²⁷ *My Maryland Lodge v Adt*, 100 Md. 238, 59 Alt. 721, 68 L. R. A. 252; *George Jonas Glass Co. v Glass*

Bottle Blowers' Ass'n, 72 N. J. Eq. 653, 66 Atl. 953; *Barr v Essex Trades Council*, 53 N. J. Eq. 101, 30 Atl. 881; *Quinn v Leathem*, 1901 (A. C.) 495, 70 L. J. P. C. 76, 85 L. T. 289.

in it or have other business dealings with it. It is in no sense a competing business with the publication of a daily newspaper.²⁸ It has also been held that a union—which does not employ labor—which seeks to compel a manufacturer to unionize his plant, is not such a competitor in the labor market as to justify it in procuring his servants to quit their employment, and other workmen not in service to refrain from accepting employment from him.²⁹

§ 90. —Boycott not justifiable because of ultimate purpose to advance interests of combination.

The fact that the ultimate purpose of a boycott is to advance the interests of the conspirators does not divest it of its unlawful character. The direct and primary purpose of a boycott, it has been said, must be regarded as the injury or destruction of the business of the person against whom it is directed, and the fact that it is designed as a means to an end, and that end, in itself considered a lawful one, does not render the boycott lawful.³⁰

§ 91. Criminal liability—Statement and application of rule.³¹

Boycotts within the definition adopted in chapter VI are very generally declared to be criminal conspiracies at common law and indictable as such.³² Such acts, it has been said, will be restrained

²⁸ *Barr v Essex Trades Council*, 53 N. J. Eq. 101, 30 Atl. 881.

²⁹ *George Jonas Glass Co. v Glass Bottle Blowers' Ass'n*, 72 N. J. Eq. 653, 66 Atl. 953.

³⁰ *State v Glidden*, 55 Conn. 46, 8 Atl. 890, 3 Am. St. Rep. 23; *Loewe v California State Federation of Labor*, 139 Fed. 71.

³¹ *Pleading and Practice in Criminal Prosecutions*—See *Infra* Chapter VIII, *Pleading and Practice, in Actions Arising Out of Boycotts at Capital*, Section 129.

³² *Connecticut*.—*State v Stockford*, 77 Conn. 227, 58 Atl. 769, 107 Am. St. Rep. 28. And see *State v Glidden*, 55 Conn. 46, 8 Atl. 890, 3 Am. St. Rep. 23.

Michigan.—*Beck v Railway Teamsters' Protective Union*, 118 Mich. 417, 77 N. W. 13, 42 L. R. A. 407,

74 Am. St. Rep. 44.

Nevada.—*Branson v Industrial Workers of the World*, 95 Pac. 354.

New York.—*People v Gill*, 5 N. Y. Cr. Rep. 509; *Davis v Zimmerman*, 91 Hun. 489, 36 N. Y. Suppl. 203; *People v Melvin*, *Yates' Sel. Cas.*, 112; 2 *Wheelers Cr. Cas.* 262; *People v Kostka*, 4 N. Y. Cr. Rep. 429; *People v Wilzig*, 4 N. Y. Cr. Rep. 403.

Vermont.—*State v Stewart*, 59 Vt. 273, 9 Atl. 559, 59 Am. Rep. 710.

Virginia.—*Crump v Com*, 84 Va. 927, 6 S. E. 620, 10 Am. St. Rep. 895; *Com v Sheldon*, 11 Va. L. J. 329.

United States.—*Lake Erie etc. R. Co. v Bailey*, 61 Fed. 494; *United States v Cassidy*, 67 Fed. 698; *Old Dominion Steamship Co. v McKenna*, 30 Fed. 48.

England.—*Reg v Duffield*, 5 Cox

and punished by the criminal law as oppressive to the individual, injurious to the prosperity of the community, and subversion of the peace and good order of society.³³ While they "may give to the individual directly affected by them a private right of action for damages, they, at the same time, lay a basis for an indictment on the ground that the state itself is directly concerned in the promotion of all legitimate industries, and the development of all its resources, and owes the duty of protection to its citizens engaged in the exercise of their callings. The good order, peace and general prosperity of the state is directly involved in the question."³⁴ They are likewise punishable under statutes making it an offense for any person to threaten or use any means to intimidate any person against his will, to do or abstain from doing any act which such person has a legal right to do,³⁵ or to prevent another from exercising his calling by force, threats or intimidation,³⁶ or to use threats or intimidation to prevent a person from continuing in or accepting employment,³⁷ and are not legalized by statutes which make lawful the peaceable co-operation of workmen to maintain or advance the rate of wages.³⁸ The rule has been applied in cases where the combination engaged in the boycott had in view the use of force, threats and intimidation to induce workmen to abandon in concert the service of the person against whom it was designed to operate, or not to enter his service,³⁹ or where they actually used force to prevent his employes from doing their work,⁴⁰ It has been said

C. C. 404. And see *Smith v Thomasson*, 16 Cox C. C. 740; *Reg. v Druitt*, 10 Cox C. C. 592.

³³ *Crump v Com*, 84 Va. 927, 6 S. E. 620, 10 Am. St. Rep. 695.

³⁴ *State v Stewart*, 59 Vt. 273, 9 Atl. 559, 59 Am. Rep. 710.

³⁵ *State v Stockford*, 77 Conn. 227, 58 Atl. 769, 107 Am. St. Rep. 28; *State v Glidden*, 55 Conn. 46, 8 Atl. 890, 3 Am. St. Rep. 231.

³⁶ *New York Central Iron Works v Brennan*, 105 N. Y. Suppl. 865; *Davis v Zimmerman*, 91 Hun. 489, 36 N. Y. Suppl. 303; *Old Dominion Steamship Co. v McKenna*, 30 Fed. 48. And see *People v Yannicola*, 117 N. Y. Suppl. 381.

³⁷ *State v Stewart*, 59 Vt. 273, 9 Atl. 559, 59 Am. Rep. 710; *Reg. v Duffield*, 5 Cox C. C. 404.

³⁸ *Branson v Industrial Workers of the World*, (Nev.), 95 Pac. 354; *People v Gill*, 5 N. Y. Cr. Rep. 509.

³⁹ *State v Stockford*, 77 Conn. 227, 58 Atl. 759, 107 Am. St. Rep. 28; *Davis v Zimmerman*, 91 Hun. 489, 36 N. Y. Suppl. 303; *State v Stewart*, 59 Vt. 273, 9 Atl. 559, 59 Am. Rep. 710; *Lake Erie etc. R. Co. v Bailey*, 61 Fed. 494. See also *People v Yannicola*, 117 N. Y. Suppl. 381; *Smith v Thomasson*, 16 Cox C. C. 740; *Reg. v Druitt*, 10 Cox C. C. 592.

⁴⁰ *Branson v Industrial Workers of the World*, (Nev.), 95 Pac. 354.

that "the exposure of a legitimate business to the control of an association that can order away its employes, and frighten away others that it may seek to employ, and thus be compelled to cease the further prosecution of its works, is a condition of things utterly at war with every principle of justice, and with every safeguard of protection that citizens under our system of government are entitled to enjoy. The direct tendency of such intimidation is to establish over labor and over all industries a control that is unknown to the law, and that is exerted by a secret association of conspirators, actuated solely by personal considerations, and whose plans, carried into execution, usually result in violence and the destruction of property."⁴¹ So the rule has been applied where the combination used or contemplated the use of force or violence, to prevent prospective customers from patronizing the party boycotted,⁴² or where the means used or contemplated to render the boycott effective consisted in threats directed against the customers of the party boycotted that the members of the combination would withdraw their patronage from them if they patronized such party,⁴³ or would, in turn, coerce their customers into withholding their patronage from them.⁴⁴ Thus in *State v Glidden*,⁴⁵ the facts were as follows: For the purpose of compelling a publishing company to discharge its workmen and employ such men as they should name, defendants entered into a combination whereby they agreed that if their demands were not complied with, they would represent to and threaten the company, that they belonged to several secret labor unions, comprising a membership of 1,000 persons; that through the fear and terror to be created by the secrecy and discipline of the organization and the large number of its members, and by threats of the withdrawal of the patronage of such members they would so control the persons dealing with the company as to compel them against their will to cease doing so; and

⁴¹ *State v Stewart*, 59 Vt. 273, 9 Atl. 559, 59 Am. Rep. 710.

⁴² See *People v Wilzig*, 4 N. Y. Cr. Rep. 403.

⁴³ *State v Glidden*, 55 Conn. 46, 8 Atl. 890, 3 Am. St. Rep. 23. See also *State v Stockford*, 77 Conn. 237, 58 Atl. 769, 107 Am. St. Rep. 28. Contra *State v Van Pelt*, 136 N. C. 633,

49 S. E. 177, 68 L. R. A. 700.

⁴⁴ *State v Glidden*, 55 Conn. 46, 8 Atl. 890, 3 Am. St. Rep. 890; *Old Dominion Steamship Co. v McKenna*, 30 Fed. 48. *Crump v Com*, 84 Va. 927, 6 S. E. 620, 10 Am. St. Rep. 895.

⁴⁵ 55 Conn. 46, 8 Atl. 890, 3 Am. St. Rep. 23.

that if the company did not yield to defendant's demands, defendants would in like manner represent to and threaten all persons dealing with the company, with the loss of the patronage of the members of the combination, and thereby coerce them into ceasing to deal with the company. It was held that this amounted to a criminal conspiracy both at common law and under a statute making it an offense for any person to threaten or use any means to intimidate any person against his will to do or abstain from doing any act which such person has a legal right to do. And in *State v Stewart*,⁴⁸ where the indictment alleged that defendants members of a labor union combined to control and injure a designated company, and by violence, threats and intimidation to force it to conform to the rules and regulations of their union, and in order to deprive it of all the workmen employed in its shops, agreed to drive them away, by violence, threats and intimidation, it was held that it charged a criminal conspiracy at common law, and a demurrer thereto was overruled.

§ 92. Persons liable.

The elementary principles relating to criminal liability for conspiracy control in determining who are criminally liable for a boycott. If several persons combine to commit an unlawful act, each is criminally responsible for the acts of his associates or confederates committed in furtherance of any prosecution of the common design.⁴⁹ In contemplation of law, the act of one is the act of all. Each is responsible for everything done by his confederates, which follows incidentally in the execution of the common design as one of the probable and natural consequences, even though it was not intended as part of the original plan. Nevertheless the act must be the ordinary and probable effect of the wrongful act specifically agreed on so that the connection between them may be reasonably apparent, and not a fresh and independent product of the mind of one of the confederates outside of or foreign to the common design. Even if the common design is unlawful if one member depart from from the original design as agreed on by all of the members, and did an act which was not only not contemplated by those who entered into the common purpose, but was not in furtherance thereof and

⁴⁸ 59 Vt. 273, 59 Am. Rep. 710, 9 Atl. 559.

⁴⁹ *Conspiracy*, 8 Cyc 641, and cases

cited; *United States v Cassidy*, 67 Fed. 707. And see *Infra* this chapter, section 108.

not the natural or legitimate consequence of anything connected therewith, the person guilty of such act if it was in itself unlawful would alone be responsible therefor.⁴⁸ To render persons criminally liable for conspiracy it is not necessary that the conspiracy should have originated with them. Persons who enter into a conspiracy or common design already formed are deemed parties to all acts done by any of the other parties before or afterwards in furtherance of the common design.⁴⁹

§ 93. Liability to action for damages—Statement and application of rule.⁵⁰

The person against whom the boycott is directed may maintain an action against the members of the combination engaged in it to recover the damages resulting therefrom.⁵¹ The rule has been applied where force, violence and intimidation was used preventing the employes of the party boycotted from doing their work,⁵² or preventing others from entering his employment,⁵³ or where threats were made to injure the business of the plaintiff's customers or

⁴⁸ *Conspiracy*, 8 Cyc. 641, 642 and cases cited.

⁴⁹ 3 Greenleaf's Evidence 93; 2 Bishop's New Criminal Law 190; 3 Chitty's Criminal Laws 1141, 1143.

⁵⁰ Pleading and Practice in Action for Damages, see the following chapter.

⁵¹ *Illinois*.—Purington v Hinchliff, 259 Ill. 156, 76 N. E. 47, 109 Am. St. Rep. 322, 28 L. R. A. 824; Doramus v Hennessey, 176 Ill. 608, 52 N. E. 524, 43 L. R. A. 802, 68 Am. St. Rep. 203.

Nevada.—Branson v Industrial Workers of the World, 95 Pac. 354.

New Jersey.—Jersey Printing Co. v Cassidy, 63 N. J. Eq. 759, 53 Atl. 230.

New York.—See Jones v Maher, 116 N. Y. Suppl. 180, 62 Misc. 388.

Ohio.—Moores v Bricklayers' Union 23 W. L. B. 48, 10 Ohio Dec. (Reprint) 645; Parker v Bricklayers' Union No. 1, 21 W. L. B. 223, 10 Ohio Dec. (Reprint) 458.

Oregon.—Longshore Printing & Publishing Co. v Howell, 26 Ore. 527, 28 L. R. A. 464, 46 Am. St. Rep. 640.

Vermont.—See W. R. Patch Mfg. Co. v Local Machinists' Union, 77 Vt. 294, 60 Atl. 74, 107 Am. St. Rep. 765.

United States.—Old Dominion Steamship Co. v McKenna, 30 Fed. 48.

England.—Quinn v Leathem, (1901) A. C. 495, 70 L. J. P. C. 76, 85 L. T. 289, 50 W. R. 139, 65 J. P. 708; Temperon v Russell, (1893) 1 Q. B. 915, 62 L. J. Q. B. 412, 69 L. T. 78.

Canada.—Krug Furniture Co. v Amalgamated Woodworkers' Union, 5 Ont. 463; Metallic Roofing Co. v Jose, 12 Ont. L. Rep. 200.

⁵² Branson v Industrial Workers of the World, (Nev.), 95 Pac. 354. And see Jones v Maher, 116 N. Y. Suppl. 180, 62 Misc. 388.

⁵³ Krug Furniture Co. v Amalgamated Woodworkers' Union, 5 Ont. (Can.) 463.

prospective customers,⁵⁴ or his materialmen,⁵⁵ or independent contractors doing work for him under contract,⁵⁶ in case they refused to withhold business relations from plaintiff, by such means as the causing loss of patronage to them,⁵⁷ or the imposition of fines on them,⁵⁸ or the causing of strikes in their establishments.⁵⁹ Thus in *Temperton v Russell*,⁶⁰ it appeared that a firm of builders refused to obey certain rules laid down by three trade unions connected with the building trade at Hull. Thereupon a joint committee of the unions attempted to prevent it from procuring any materials by notifying material men not to furnish them on pain of being themselves boycotted. The plaintiff, a materialman, refused to comply with its demand and the unions then demanded of his materialmen not to furnish him with any materials, with the threat that, if they did so, their workmen would quit. The result of this was that contracts for supplies to the plaintiff were broken and others who, but for the threats would have made contracts were deterred from doing so. It was held that the boycott was an unlawful conspiracy, and that the joint committee of the unions who were sued were liable in damages for a malicious interference with the plaintiff's business. In *Moore v Bricklayers' Union*,⁶¹ a case very similar to the one just cited, it appeared that a labor union became involved in some controversy with one Parker concerning various matters, and in order to bring Parker to their terms, the Union notified material men that anyone selling to him would be boycotted. Moore, the plaintiff, persisted in selling to Parker

⁵⁴ *Purinton v Hinchliff*, 219 Ill. 156, 76 N. E. 47, 109 Am. St. Rep. 322, 2 L. R. A. N. S. 824; *Longshore Printing & Publishing Co. v Howell*, 26 Ore. 527, 38 Pac. 547, 28 L. R. A. 464, 46 Am. St. Rep. 460; *Old Dominion Steamship Co. v McKenna*, 30 Fed. 48. And see *March v Bricklayers' & Plasterers' Union*, 79 Conn. 7, 63 Atl. 291, 118 Am. St. Rep. 127, 4 L. R. A. N. S. 1198.

⁵⁵ *Moore v Bricklayers' Union*, 23 Ohio W. L. B. 48, 10 Ohio Dec. (Reprint) 645.

⁵⁶ *Doremus v Hennessey*, 176 Ill. 608, 52 N. E. 524, 43 L. R. A. 802, 68 Am. St. Rep. 203.

⁵⁷ *Old Dominion Steamship Co. v McKenna*, 30 Fed. 48; *Moore v Bricklayers' Union*, 23 W. L. B. 48, 10 Ohio Dec. (Reprint) 645.

⁵⁸ *Purinton v Hinchliff*, 219 Ill. 156, 76 N. E. 47, 109 Am. St. Rep. 322, 2 L. R. A. N. S. 824.

⁵⁹ *Quinn v Leathem*, (1901) A. C. 495, 70 L. J. P. C. 76, 85 L. T. 289, 50 W. R. 139, 65 J. P. 708. And see *Metallic Roofing Co. v Jose*, 12 Ont. L. Rep. 200.

⁶⁰ (1893) 1 Q. B. 715, 62 L. J. Q. B. 412, 69 L. T. 78.

⁶¹ 23 Ohio W. L. B. 48, 10 Ohio Dec. (Reprint) 645.

notwithstanding the notice and the union notified all of Parker's customers or prospective customers that none of its members would work Moores' material thereby causing serious damage to his business. No acts or threats of violence were shown. The court held that the acts of the members of the union amounted to an unlawful conspiracy and that they were liable for the damages. In *Doremus v Hennessey*,²² the facts were as follows: plaintiff who carried on a laundry business did not own a laundry plant herself, but employed other laundry companies to do the work of her customers. Because of her refusal to increase the price of laundry work to her customers, in accordance with the scale of prices fixed by an organization, known as the Chicago Laundrymen's Association, such association, by means of intimidation, threats and persuasion, caused several laundry companies under contract with her to do her work, to break their contracts. This was done for the purpose of injuring her business and had the effect intended. These acts were held to constitute an actionable injury. And in *Purinton v Hinchliff*,²³ it appeared that a bricklayers' union comprising most of the bricklayers of a county, entered into an agreement with an incorporated association of masons and builders, binding the members of such association not to buy or use any brick from one not a member thereof, and binding the members of the union not to handle any brick, made by one not a member of such association. Thereafter defendants—the incorporated association, and members of the union—procured persons to go to customers of plaintiff, a brick manufacturer, and to attend at the places where plaintiff's bricks were bought to be used in constructing buildings, and to make representations that if customers should purchase or workmen lay brick manufactured by plaintiff, they would be prevented from completing any building upon which it was proposed to use plaintiff's brick. By these acts and the imposition of fines on persons dealing in and using plaintiff's brick, defendants prevented customers of plaintiff from purchasing his brick, and also prevented workmen from laying or using plaintiff's bricks, thereby greatly injuring his business. It was held that he had a good cause of action for the damage resulting from these acts.

²² 176 Ill. 608, 52 N. E. 524, 43 L. R. A. 802, 68 Am. St. Rep. 203.

²³ 219 Ill. 156, 76 N. E. 47, 109 Am. St. Rep. 322, 2 L. R. A. N. S. 824.

§ 94. —Persons liable.

According to well settled principles of the law of conspiracy, all the members of the combination are liable for all overt acts illegally done pursuant to the general scheme agreed on by the combination, and for the subsequent loss whether they were active participants or not,⁴⁴ and those who enter into the conspiracy after its formation, are deemed in law parties to all acts done by any of the other parties, before or afterwards in furtherance of the common design, and will be liable for the damages caused.⁴⁵ Where the members of an international association of which a local union was a part, endorsed the action of the local union in carrying on a boycott and rendered it financial assistance, they are liable with the members of the local for the resulting damages.⁴⁶

§ 95. Liability to injunctive process—Jurisdiction to award injunction.— —In general.⁴⁷

Whatever form the boycott may take, or whatever means may be used to render it effective, the remedy most frequently invoked is the writ of injunction. The jurisdiction of courts of equity to restrain boycotts by injunction is usually upheld on one or more of the following grounds; injury irreparable in its nature,⁴⁸ the difficulty of ascertaining the measure of damages according to legal

⁴⁴ *Purington v Hinchliff*, 219 Ill. 156, 76 N. E. 47, 109 Am. St. Rep. 322, 2 L. R. A. N. S. 824; *Doremus v Hennessey*, 176 Ill. 608, 52 N. E. 524, 43 L. R. A. 802, 68 Am. St. Rep. 203; *Conspiracy*, 8 Cyc 657, 658, and cases cited.

⁴⁵ *E. R. Patch Mfg. Co. v Protection Lodge*, 77 Vt. 294, 60 Atl. 74, 107 Am. St. Rep. 765. And see *Greenleaf's Evidence* § 95.

⁴⁶ *Metallic Roofing Co. v Jose*, 12 Ont. (Can.) 200.

⁴⁷ *Pleading and Practice in Suits for Injunctions*, see the following chapter.

⁴⁸ *California*.—*Goldberg, Bowen & Co. v Stablemen's Union*, 149 Cal. 429, 86 Pac. 806, 117 Am. St. Rep. 144,

8 L. R. A. N. S. 460.

Michigan.—*Beck v Railway Teamsters' Protective Union*, 118 Mich. 497, 77 N. W. 13, 74 Am. St. Rep. 421, 42 L. R. A. 407.

New Jersey.—*Frank v Herold*, 63 N. J. Eq. 259, 53 Atl. 230; *Barr v Essex Trades Council*, 53 N. J. Eq. 101, 30 Atl. 801.

Ohio.—*Hillenbrand v Building Trades Council*, 14 Ohio Dec. N. P. 628.

Pennsylvania.—*Patterson v Building Trades Council*, 11 Pa. Dist. Rep. 500; *Brace Bros. v Evans*, 5 Pa. Co. Ct. 163, 3 Ry. & Corp. L. J. 561.

United States.—*Toledo etc. R. Co. v Pennsylvania Co.*, 54 Fed. 730, 19 L. R. A. 387, 5 Inters. Com. Rep. 522.

principles,⁶⁹ the continuing nature of the injury,⁷⁰ and the necessity for a multiplicity of suits, if plaintiff be restricted to his remedy at law.⁷¹ The remedy by injunction is entirely independent of the remedy by action at law for damages and arises out of the conditions of the inadequacy of the latter remedy.⁷² "The remedy at law, in order to exclude a concurrent remedy at equity must be as complete, as practical, and as efficient to the ends of justice and its prompt administration as the remedy in equity."⁷³ While it has been declared in some cases that equity will not enjoin a boycott unless it appears that the remedy at law is inadequate,⁷⁴ according to the vast majority of reported cases, the very nature of a boycott is such that some one or more of the grounds essential to the jurisdiction of a court of equity to grant relief against it by injunction are always present.⁷⁵ No clearer statement of this principle can be found than in an article by President Taft in which he summarizes and explains the effect of his decisions in numerous boycott cases. In this article he says: "The character of the in-

⁶⁹ *Goldberg, Bowen & Co. v Stablemen's Local Union*, 149 Cal. 429, 86 Pac. 806, 117 Am. St. Rep. 144, 8 L. R. A. N. S. 460; *Frank v Herold*, 63 N. J. Eq. 259, 53 Atl. 230; *Sailors' Union of the Pacific v Hammond Lumber Co.*, 156 Fed. 450.

⁷⁰ *Goldberg, Bowen & Co. v Stablemen's Local Union*, 149 Cal. 429, 86 Pac. 806, 117 Am. St. Rep. 144, 8 L. R. A. N. S. 460; *Sherry v Perkins*, 147 Mass. 212, 17 N. E. 307, 9 Am. St. Rep. 689; *Murdock v Walker*, 152 Pa. St. 595, 25 Atl. 492, 34 Am. St. Rep. 678; *Sailors' Union of the Pacific v Hammond*, 156 Fed. 450; *Toledo etc. R. Co. v Pennsylvania Co.*, 54 Fed. 730, 19 L. R. A. 387, 5 Inters. Com. Rep. 522, *Coeur D'Alene Consolidated & Min. Co. v Miners' Union of Wardner*, 51 Fed. 260, 19 L. R. A. 382.

⁷¹ *Frank v Herold*, 63 N. J. Eq. 259, 53 Atl. 230; *Barr v Essex Trades Council*, 53 N. J. Eq. 101, 30 Atl. 801; *Hillenbrand v Building Trades Council*, 14 Ohio Dec. N. P.

628; *Hopkins v Oxley Stave Co.*, 83 Fed. 912, 28 C. C. A. 99; *Patterson v Building Trades Council*, 11 Pa. Dist. Rep. 500; *Brace Bros. v Evans*, 5 Pa. Co. Ct. 163, 3 Ry. & Corp. L. J. 561; *Hagan v Blindell*, 56 Fed. 696; *Coeur D'Alene Consolidated & Min. Co. v Miners' Union of Wardner*, 51 Fed. 260, 19 L. R. A. 382.

⁷² *Southern R. Co. v Machinists' Local Union*, 111 Fed. 49.

⁷³ *Walla Walla City v Walla Walla Water Co.*, 172 U. S. 1, 19 Sup. Ct. 77, 33 L. ed. 341; *Sailors' Union of the Pacific v Hammond*, 156 Fed. 450. See also *North v Peters*, 138 U. S. 271, 11 Sup. Ct. 346, 34 L. ed. 936; *Watson v Sutherland*, 5 Wall (U. S.) 74, 18 L. ed. 580.

⁷⁴ *Atkins v W. & A. Fletcher Co.*, 65 N. J. Eq. 658, 55 Atl. 1074; *Longshore Printing & Publishing Co. v Howell*, 26 Ore. 527, 38 Pac. 547, 28 L. R. A. 464, 46 Am. St. Rep. 640.

⁷⁵ See *Infra* this chapter, sections 101-105 inclusive.

jury in cases of boycott when business is injured is such that it is impossible to estimate what the injury is. This is palpable. Moreover, the injury is a result of a series of acts combined together, each one of which would not justify a suit for damages, but all of which taken together with their recurrent effect bring about the injury which can only be remedied adequately by an injunction to prevent the carrying out of the combination.”⁷⁶

§ 96. — —As affected by criminality of acts sought to be enjoined.

While it is true that ordinarily an injunction will not be issued to restrain the commission of a crime,” the fact that the acts constituting a boycott or some of them, are punishable criminally does not divest a court of equity of jurisdiction to enjoin their commission.”⁷⁸ The enforcement of the criminal law is for the criminal court, but where the breach of the criminal law is also a violation of a property right and threatens irreparable injury, the chancellor may interpose by injunction to protect property.” As was said in the *Deb’s* case, “The law is full of instances where the same act may give rise to a civil action and a criminal prosecution.

⁷⁶ “Judicial Decisions As An Issue in Politics.” McClure’s Magazine, June, 1909, p. 206.

⁷⁷ *Vegelahn v Guntner*, 167 Mass. 92, 44 N. E. 1077; 57 Am. St. Rep. 443, 55 L. R. A. 92. In *re Debs*, 158 U. S. 564, 593, 15 Sup. Ct. 900, 39 L. ed. 1092.

⁷⁸ *California*.—*Pierce v Stablemen’s Union*, 103 Pac. 323.

Georgia.—*Jones v E. Van Winkle Gin & Machine Works*, 131 Ga. 336, 62 S. E. 236, 127 Am. St. Rep. 235.

Kentucky.—*Underhill v Murphy*, 117 Ky. 640, 78 S. W. 482, 111 Am. St. Rep. 262.

Massachusetts.—*Vegelahn v Guntner*, 167 Mass. 92, 44 N. E. 1077, 57 Am. St. Rep. 443, 55 L. R. A. 92; *Sherry v Perkins*, 147 Mass. 212, 17 N. E. 307, 9 Am. St. Rep. 689.

Missouri.—*Hamilton-Brown Shoe Co v Saxey*, 131 Mo. 212, 32 S. W. 1106, 52 Am. St. Rep. 662.

New York.—*New York Central Iron*

Works v Brennan, 105 N. Y. Suppl. 825; *Mathews v Shankland*, 56 N. Y. Suppl. 123, 25 Misc. 604; *Davis v Zimmerman*, 91 Hun. 489, 36 N. Y. Suppl. 303.

Ohio.—*Dayton Mfg. Co. v Metal Polishers’ Union*, 11 Ohio Dec. 643; *Hoster Brewing Co. v Giblin*, 14 Ohio Dec N. P. 346.

Pennsylvania.—*Patterson v Building Trades Council*, 11 Pa. Dist. Rep. 500.

United States.—*Union Pac. R. Co. v Ruef*, 120 Fed. 102; *Southern R. Co. v Machinists’ Local Union*, 111 Fed. 49; *Consolidated Steel & Wire Co. v Murray*, 80 Fed. 811; *Elder v Whitesides*, 72 Fed. 724; *Arthur v Oakes*, 63 Fed. 320, 25 L. R. A. 414, 4 Inters. Com. Rep. 744.

⁷⁹ *Underhill v Murphy*, 117 Ky. 640, 78 S. W. 482, 111 Am. St. Rep. 262; *Hamilton-Brown Shoe Co. v Saxey*, 131 Mo. 212, 32 S. W. 1106, 52 Am. St. Rep. 622.

An assault with intent to kill may be punished criminally under an indictment therefor, or will support a civil action for damages; and the same is true of all other offenses which cause injury to person or property. In such cases the jurisdiction of the civil court is invoked, not to enforce the criminal law and punish the wrongdoer, but to compensate the injured party for the damages which he or his property has suffered; and it is no defense to the civil action that the same act by the defendant exposes him also to indictment and punishment in a court of criminal jurisdiction.”⁸⁰ The remedy by injunction has no relation to the remedy by criminal prosecution, except that the criminal laws may be so effectively enforced that there will be no occasion to resort to equity and the inadequacy of the protection afforded under such laws, from whatsoever cause, affords the occasion and necessity for a resort to equity.⁸¹ Considering the question from the standpoint of expediency, it is better for employers and employes, and for the peace and safety of the state, that relief by injunction against invasion of property rights amounting to a crime be granted by the courts, where parties can be heard, than to permit such violations of law to go unrestrained until force is arrayed against force, and the strong arm of the executive is compelled to intervene with troops to prevent disorder and the destruction of property.⁸² So inasmuch as it affords no reason to deny an injunction that the acts complained of are criminal, it necessarily follows, that an injunction should not be refused because the acts done or threatened, though merely unlawful may lead to the commission of other acts purely criminal.⁸³

§ 97. — — Mere apprehension of injury insufficient.

While ground is present for injunctive relief whenever there is an actual or threatened injury to property, coupled with allegations of facts bringing the case within one of the recognized grounds of equitable jurisdiction,⁸⁴ the mere apprehension of some future acts of a wrongful nature, which might be injurious to the plaintiffs, is not a sufficient basis for insisting upon the preventive

⁸⁰ *In re Debs*, 158 U. S. 564, 593, 15 Sup. Ct. 900, 39 L. ed. 1092.

⁸¹ *Southern R. Co. v Machinists' Local Union*, 111 Fed. 49.

⁸² *Davis v Zimmerman*, 91 Hun. 498, 36 N. Y. Suppl. 303.

⁸³ *Coeur D'Alene Consolidated & Min. Co. v Miners' Union of Wardner*, 51 Fed. 260, 19 L. R. A. 382.

⁸⁴ *Sailors' Union of the Pacific v Hamond Lumber Co.*, 156 Fed. 450.

remedy of injunction.⁸⁵ Thus the fact that the constitution of an association contains articles capable of being so enforced as to work a boycott of some person, furnishes no ground for enjoining their enforcement, on a bill by a person who does not show that he is threatened by such injurious action and is likely to suffer pecuniary injury from it.⁸⁶

§ 98. —Necessity for established business as a prerequisite to jurisdiction.

To authorize the issuance of an injunction against a boycott, the complainant must show that he has an established business. Hence, on a bill that merely alleges that complainant is educated as an embalmer and undertaker, and has for a specified time prior to the filing of the bill been ready and willing to engage in that business in a town designated but has been prevented from doing so by defendant association and its members, an injunction should be denied.⁸⁷

§ 99. —Cessation of acts complained of as affecting right to injunction.

The question as to the maintenance of a bill and the granting of relief to a complainant is to be determined by the status existing at the time of filing the bill. The fact that the acts complained of have ceased pending the filing of the bill and the hearing furnishes no ground for denying an injunction especially where there has been no disclaimer of the right to do such acts.⁸⁸ So the fact that the acts complained of have ceased after the granting of an interlocutory injunction against their continuance will not prevent the allowance of a permanent injunction against such acts. Temporary but disingenuous compliance with the terms of an interlocutory injunction, with the reserved purpose to renew unlawful action after the final hearing, might completely paralyze all the power of the court to grant adequate relief, and where the injunction forbids

⁸⁵ *Thomas Russell & Sons v Stampers etc. Union*, 107 N. Y. Suppl. 303, 57 Misc. 96. And see *Reynolds v Everett*, 144 N. Y. 189, 39 N. E. 72.

⁸⁶ *Van Der Platt v Undertakers' & Liverymen's Ass'n*, (N. J.) 62 Atl. 453.

⁸⁷ *Van Der Platt v Undertakers' & Liverymen's Ass'n*, (N. J.) 62 Atl. 455.

⁸⁸ *United States v Workingmen's Amalgamated Council*, 54 Fed. 994, 26 R. L. A. 158, 4 Interstate Com. Rep. 831 (affirmed in 57 Fed. 85, 6 C. C. A. 258, 11 U. S. App. 426).

nothing but actions in themselves unlawful, there can be no practical harm in its continuance against any persons who are not engaged in such unlawful actions and do not intend to do so in the future.⁸⁹ Where however in addition to the cessation of the acts complained of, there is a failure on final hearing to make out a case sufficiently strong to move the court to exercise its extraordinary equitable powers, the bill should be dismissed.⁹⁰ And it has been held that where all the acts complained of were committed prior to the commencement of the action and there is no evidence that further acts of the same character are to be anticipated an injunction against such acts will not be granted because an injunction lies only to prevent threatened injury.⁹¹

§ 100. —Particular combinations liable to injunction.—Coercing workmen not to enter into or continue in one's employ.

It is almost universally held that a court of equity will restrain by injunction, the execution of a conspiracy, or the continuance of acts commenced in furtherance thereof, to injure a person's business by the use of such means as force, violence or intimidation to prevent those in his employ from working for him or others not in his service but willing to accept employment from him, from doing so,⁹² and in the injunction suit, incidental damages may be

⁸⁹ *Piano & Organ Workers' International Union v Piano & Organ Supply Co.*, 124 Ill. App. 353; *Compare Sweeney v Torrance*, 11 Pa. Co. Ct. 497.

⁹⁰ *Reynolds v Everett*, 144 N. Y. 789, 39 N. E. 72.

⁹¹ *J. F. Parkinson Co. v Building Trades Council*, 154 Cal. 581, 98 Pac. 1027, 21 L. R. A. N. S. 550.

⁹² *California*.—*Pierce v Stablemen's Union*, 103 Pac. 324; *Goldberg, Bowen & Co. v Stablemen's Union*, 149 Cal. 429, 86 Pac. 806, 107 Am. St. Rep. 144.

Georgia.—*Jones v E. Van Winkle Gin & Machine Works*, 131 Ga. 336, 62 S. E. 236, 127 Am. St. Rep. 235.

Illinois.—*A. R. Barnes & Co. v Chicago Typographical Union*, 232 Ill. 424, 83 N. E. 940, 14 L. R. A. N.

S. 1018; *Franklin Union v People*, 220 Ill. 355, 77 N. E. 176, 110 Am. St. Rep. 248, 4 L. R. A. N. S. 1001; *O'Brien v People*, 216 Ill. 354, 75 N. E. 108, 108 Am. St. Rep. 249; *Christensen v Kellogg Switchboard & Supply Co.*, 110 Ill. App. 61; *Beaton v Tarrant*, 102 Ill. App. 124.

Indiana.—*Karges Furniture Co. v Amalgamated Woodworkers' Local Union*, 165 Ind. 421, 75 N. E. 877, 2 L. R. A. N. S. 788.

Kentucky.—*Underhill v Murphy*, 117 Ky. 640, 78 S. W. 482, 111 Am. St. Rep. 262.

Maryland.—*My Maryland Lodge v Adt*, 100 Md. 238, 59 Atl. 721, 68 L. R. A. 252.

Massachusetts.—*L. D. Wilcutt & Sons Co. v Driscoll*, 200 Mass. 110, 85 N. E. 897. *Vegeahn v Guntner*, 167

Mass. 92, 44 N. E. 1077, 57 Am. St. Rep. 453, 55 L. R. A. 92; Sherry v Perkins, 147 Mass. 212, 17 N. E. 307, 9 Am. St. Rep. 689.

Michigan.—Ideal Mfg. Co. v Wayne Circuit Judge, 139 Mich. 92; 102 N. W. 372; Beck v Railway Teamsters' Protective Union, 118 Mich. 497, 77 N. W. 13, 74 Am. St. Rep. 421, 42 L. R. A. 407; Enterprise Foundry Co. v Iron Moulders' Union, 149 Mich. 311, 112 N. W. 685, 13 L. R. A. N. S. 548.

Missouri.—Hamilton-Brown Shoe Co. v Saxey, 131 Mo. 212, 32 S. W. 1106, 52 Am. St. Rep. 622. And see Lohse Patent Door Co. v Fuelle, 215 Mo. 421, 114 S. W. 997, 22 L. R. A. N. S. 607.

New Jersey.—George Jonas Glass Co. v Glass Bottle Blowers' Ass'n, 72 N. J. Eq. 653, 66 Atl. 953; W. & A. Fletcher Co. v International Ass'n of Machinists, (N. J.) 65 Atl. 1077; Martin v McFall, 65 N. J. Eq. 92, 55 Atl. 465; Jersey City Printing Co. v Cassidy, 63 N. J. Eq. 759; 53 Atl. 230; Frank v Herold, 63 N. J. Eq. 443, 53 Atl. 152; Barr v Essex Trades Council, 53 N. J. Eq. 101, 30 Atl. 801.

New York.—Thomas Russell & Sons v Stampers' etc. Union, 107 N. Y. Suppl. 303, 57 Misc. 96; New York Central Iron Works v Brennan, 105 N. Y. Suppl. 865; Butterick Publishing Co. v Typographical Union No. 6, 100 N. Y. Suppl. 292, 50 Misc. 1; Coons v Christie, 53 N. Y. Suppl. 668, 24 Misc. 296; W. P. Davis Machinery Co. v Robinson, 84 N. Y. Suppl. 837, 41 Misc. 323; Master Horseshoers' Protective Ass'n v Quinlivan, 82 N. Y. Suppl. 288, 83 App. Div. 459; Herzog v Fitzgerald, 77 N. Y. Suppl. 366, 77 App. Div. 110; Davis v Zimmerman, 91 Hun. 489, 36 N. Y. Suppl. 303. But see Johnston Harvester Co. v Meinhardt, 9 Abbotts N. C. 391.

Ohio.—Brown Mfg. Co. v Local Union No. 76, 12 Ohio Dec. 753; Eureka Foundry Co. v Lehker, 13 Dec. N. P. 398; Perkins v Rogg, 11 Ohio Dec. (Reprint) 585; Hoster Brewing Co. v Giblin, 14 Ohio Dec. N. P. 305; Morgan Engineering Co. v Nichols, 13 Ohio Dec. N. P. 614; Hillenbrand v Building Trades Council, 14 Ohio Dec. N. P. 628; New York Central etc. R. Co. v Wenger, 17 W. L. B. 306, 9 Ohio Dec. (Reprint) 815; Brunzman v Atherton, 12 Ohio Dec. N. P. 547.

Pennsylvania.—O'Neil v Behanna, 182 Pa. St. 236, 37 Atl. 843, 61 Am. St. Rep. 702, 38 L. R. A. 382; Wick China Co. v Brown, 164 Pa. 449, 30 Atl. 261; Murdock v Walker, 152 Pa. St. 595, 25 Atl. 492, 34 Am. St. Rep. 678; Marietta Casting Co. v Thuma, 28 Pa. Co. Ct. 248, 12 Pa. Dist. Rep. 552; State Line etc. R. Co. v Brown, 11 Pa. Dist. Rep. 509; Morris Run Coal Mining Co. v Guy, 14 Pa. Dist. Rep. 600; McCandless v O'Brien, 38 Pa. L. J. 435, 8 Lanc. 254; Temple Iron Co. v Carmanoski, 10 Kulp 137.

Virginia.—Everett-Waddey Co. v Richmond Typographical Union, 105 Va. 188, 53 S. E. 278, 5 L. R. A. N. S. 273.

United States.—Carter v Fortney, 170 Fed. 465; Goldfield Consolidated Mines Co. v Goldfield Miners' Union, 159 Fed. 500; Sailors' Union of the Pacific v Hammond Lumber Co., 156 Fed. 450, (affirming 149 Fed. 577); National Telephone Co. v Kent, 156 Fed. 173; Pope Motor Car Co. v Keegan, 150 Fed. 148; Gulf Bag Co. v Suttner, 124 Fed. 467; Knudsen v Benn, 123 Fed. 636; Union Pac. R. Co. Ruef. 120 Fed. 102; United States v Haggerty, 116 Fed. 510; United States v Weber, 114 Fed. 950; Reinecke Coal Co. v Wood, 112 Fed. 477; Allis-Chalmers Co. v Reliable Lodge, 111 Fed. 264; Southern R. Co.

awarded for the expenses incurred by complainant in protecting his employees from the unlawful acts of defendants.⁹³ An injunction against boycotts of this nature is not prohibited by a statute containing the following provisions: No agreement, combination or contract by or between two or more persons to do or procure to be done, or not to do or procure not to be done, any act in contemplation or furtherance of any trade dispute, between employers and employees, shall be deemed criminal, nor shall those engaged therein be indictable or otherwise punishable for the crime of conspiracy, if such act committed by one person would not be punishable as a crime, nor shall such agreement, combination or contract be considered as in restraint of trade or commerce, nor shall any restraining order or injunction be issued with relation thereto, provided that nothing in the act shall be construed to authorize force, violence or threats thereof. Even if the statute could be so construed, it would to that extent be void because violative of plaintiff's constitutional right to acquire, possess and enjoy property. It would legalize a combination in restraint of trade or commerce entered into by a trades union which would be illegal if entered into by any other persons or associations. It would exempt trades unions from the operation of the general laws of the land under circumstances where the same laws would operate against all other individuals, combinations, or associations.⁹⁴ So a statute providing that it shall not be unlawful for any two or more persons to unite, combine or bind themselves by oath, covenant, agreement, alliance or otherwise to persuade, advise, or encourage by peaceable means, any person or persons to enter into any combination for or against leaving or entering the employment of any person does not prevent a suit to enjoin labor unions and their officers from using violence,

v Machinists' Local Union, 111 Fed. 49; Otis Steel Co. v Iron Moulders' Union, 110 Fed. 698; American Steel & Wire Co. v Wire drawers' etc. Union, 90 Fed. 608; Consolidated Steel & Wire Co. v Murray, 80 Fed. 811; Elder v Whitesides, 72 Fed. 724; Hagan v Blindell, 56 Fed. 696, (affirming 54 Fed. 40); Coeur D'Alene Consolidated & Min. Co. v Miners' Union of Wardner, 51 Fed. 260, 19 L. R. A. 382. And see Lake Erie

etc. R. Co. v Bailey, 61 Fed. 494.

England.—Springhead Spinning Co. v Riley, 37 L. J. Ch. 889, L. R. 6 Eq. 551, 19 L. T. 364, 1 W. R. 1138.

⁹³ Jones v Maher, 116 N. Y. Suppl. 180, 62 Misc. 388.

⁹⁴ Goldberg, Bowen & Co. v Stablemen's Local Union, 149 Cal. 429, 86 Pac. 806, 117 Am. St. Rep. 145, 8 L. R. A. N. S. 460; Pierce v Stablemen's Union, (Cal.) 103 Pac. 323.

and intimidation to prevent workmen from continuing in or entering into complainant's service.⁹⁵ A suit of the character under consideration, it has been said, cannot be successfully defended by showing a combination between complainant and other employers to depreciate the market value of defendants' labor.⁹⁶ In a few of the cases cited to the first proposition in this section, the intimidation used was threats of imposition of penalties by unions on their members. This species of intimidation, if it may be so called, is considered at some length in another chapter.⁹⁷ In the great majority of the cases cited in this section however, the coercive measures resorted to were the actual infliction of bodily harm, or the intimidation which puts one in fear of it. A few illustrations here will suffice because the facts in this class of cases are monotonously similar. In *Murdock v Walker*,⁹⁸ it was held that a court of equity will restrain by injunction discharged employes, members of a union, from gathering about their former employer's place of business in crowds, from following his workmen to and from their boarding houses, and purposely interfering with them in passing along the public streets, and from using opprobrious and menacing language and ridicule on account of their working for their former employer. In *Sherry v Perkins*,⁹⁹ it was held that where in pursuance of a scheme by threats and intimidation to prevent persons in plaintiff's employment from continuing in such employment, defendants displayed banners in front of plaintiff's shop containing devices which amounted to a standing menace to employes or those seeking employment, which acts were perpetrated daily for several months before the filing of the bill, and were still being perpetrated at the time of the hearing, the defendants were guilty of continuous unlawful acts injurious to plaintiff's business and property—a nuisance which a court of equity will enjoin. In *Underhill v Murphy*,¹ an employer replaced his striking employes with non-union men, and they thereupon undertook to prevent the non-union men from working by following them from place to place,

⁹⁵ *Connett v United Hatters of North America*, (N. J.) 74 Atl. 188.

⁹⁶ *New York Central Iron Works Co. v Brennan*, 116 N. Y. Suppl. 457.

⁹⁷ See *Infra* chapter—*Exercise by Union of Disciplinary Measures Against Its Members as Affecting*

Rights of Third Parties.

⁹⁸ 152 Pa. St. 595, 25 Atl. 492, 34 Am. St. Rep. 678.

⁹⁹ 147 Mass. 212, 17 N. E. 307, 9 Am. St. Rep. 689.

¹ 117 Ky. 640, 78 S. W. 482, 111 Am. St. Rep. 262.

assembling about the employer's shop and demanding and threatening the employer and his workmen. They also insulted the workmen with opprobrious epithets and assaulted them so that on several occasions the employer was compelled to call in the police force of the city to escort them away from the place and protect them from the violence of the strikers. These acts were perpetrated continuously for several weeks prior to the commencement of suit for injunction. On these facts it was held that an injunction should be granted to prevent the continuance of such acts. In *Thomas Russell & Sons v Stampers' etc. Union*,² it appeared that plaintiff's striking employes in one instance, assembled in front of his place of business, shouting opprobrious names and in some instances followed those working for him and threatened them with bodily harm. Subsequently they stationed gangs of men near plaintiff's place of business who demanded that plaintiff's workmen should join the union, and who followed them with threats and assaults causing some of them to leave the city. It also appeared that plaintiff had been obliged to secure the services of special officers and to request police assistance, but all to no avail. An injunction was awarded against the continuance of such acts.

§ 101. — — Coercing customers or prospective customers to withhold patronage. — — — Statement of rule.

While the decisions are not altogether in harmony, the weight of authority is that an injunction will issue to restrain the execution of a conspiracy or the continuance of acts commenced in furtherance thereof, formed for the purpose of injuring a person's business by coercing his customers or prospective customers into withholding their patronage from him, by injury or threatening injury to their business, on their failure to comply with the demands of the conspirators.³ This doctrine has been applied where

² 107 N. Y. Suppl. 303, 57 Misc. 96.

³ *Illinois*.—*Piano & Organ Workers' International Union of America v Piano & Organ Supply Co.*, 124 Ill. App. 350. (In this state a statute makes it an offense for an organization to issue any circular to its members for the purpose of establishing a boycott with the wrongful or malicious intent to injure the business of

another. This statute, however, is merely declaratory of the common law).

Maryland.—*My Maryland Lodge v Adt*, 100 Md. 238, 59 Atl. 721, 68 L. R. A. 252.

Michigan.—*Beck v Railway Teamsters' Protective Union*, 118 Mich. 497, 77 N. W. 13, 42 L. R. A. 407, 74 Am. St. Rep. 421.

the injury so inflicted or threatened was the withholding or threats of withholding of the patronage of the conspirators from such customers or prospective customers,⁴ or the coercion of others to withhold patronage from them,⁵ or the prevention of their obtaining or keeping in their employ the labor essential to the carrying on of their business.⁶ Acts of this character are not sanctioned by statutes providing that labor unions may adopt ways and means to make their rules and regulations effective,⁷ nor by statutes mak-

Missouri.—Lohse Patent Door Co. v Fuelle, 215 Mo. 421, 114 S. W. 997, 22 L. R. A. 607; Chas. A. Olcott Planing Mill Co. v Fuelle, 114 S. W. 1013.

New Jersey.—George Jonas Glass Co. v Glass Bottle Blowers' Ass'n, 72 N. J. Eq. 653, 66 Atl. 953.

Pennsylvania.—Purvis v United Brotherhood of Carpenters & Joiners, 214 Pa. St. 344, 63 Atl. 585, 112 Am. St. Rep. 272, 12 L. R. A. N. S. 242; Brace Bros. v Evans, 5 Pa. Co. Ct. 163, 3 Ry. & Corp. L. J. 561.

United States.—United States v Lawlor, 139 Fed. 71.

⁴ *District of Columbia.*—Buck Stove & Range Company v American Federation of Labor, 35 Wash. L. Rep. 797, 70 Alb. L. J. 8 (affirmed in 37 Wash. L. Rep. 154).

New Jersey.—George Jonas Glass Co. v Glass Bottle Blowers' Ass'n, 72 N. J. Eq. 653, 66 Atl. 953; Barr v Essex Trades Council, 53 N. J. Eq. 881, 30 Atl. 881.

New York.—Mathews v Shankland, 56 N. Y. Suppl. 123, 25 Misc. 604.

United States.—Rocky Mountain Bell Telephone Co. v Montana Federation of Labor, 156 Fed. 809; Hopkins v Oxley Stave Co., 83 Fed. 912, 28 C. C. A. 99; Casey v Cincinnati Typographical Union, 45 Fed. 135, 12 L. R. A. 193.

In California and Montana, as shown in section 76, such a combination is held a lawful one, and of

course cannot be enjoined. Pierce v Stablemen's Union, (Cal.) 103 Pac. 323; Lindsay v Montana Federation of Labor, 37 Mont. 264, 96 Pac. 127.

⁵ Hopkins v Oxley Stave Co., 83 Fed. 912, 28 C. C. A. 99; Barr v Essex Trades Council, 53 N. J. Eq. 881, 30 Atl. 881.

⁶ Gray v Building Trades Council, 91 Minn. 171, 97 N. W. 663, 103 Am. St. Rep. 477, 63 L. R. A. 773; Lohse Patent Door Co. v Fuelle, 215 Mo. 421, 114 S. W. 997, 22 L. R. A. N. S. 607; Charles A. Olcott Planing Mill Co. v Fuelle, (Mo.) 114 S. W. 1093; Alfred W. Booth & Bro. v Burgess, 72 N. J. Eq. 181, 65 Atl. 226; Shine Bros. Mfg. Co. v Fox, 156 Fed. 237, 86 C. C. A. 311; Thomas v Cincinnati etc. R. Co., 62 Fed. 803, 4 Inters. Com. Rep. 788.

In California, as was shown in section 77, it is held lawful for a union to notify customers of an employer of their members who have gone on a strike against him, that all members of the union would refuse to handle any material purchased from such employer. In this state no injunction will lie to prevent such acts. J. F. Parkinson Co. v Building Trades Council, 154 Cal. 581, 98 Pac. 1027, 21 L. R. A. N. S. 550.

⁷ Purvis v United Brotherhood of Carpenters and Joiners, 63 Atl. 585, 214 Pa. St. 344, 12 L. R. A. N. S. 242, 112 Am. St. Rep. 272.

ing it lawful to combine to persuade by peaceable means any persons to enter into a combination for or against leaving the employment of any person or corporation.⁸ And such acts are not justified by the refusal of the party boycotted to discharge a non-union employe who refused to join the union to which the members of the parties engaged in the boycott belong.⁹

§ 102. — — — Illustrations of the rule.

The decisions herein set out will serve to illustrate the rules stated in the preceding section in respect of causing one's customers or prospective customers to withhold patronage from him, by causing or threatening to cause loss of patronage to them, or by threats of strikes in their establishments. In *Barr v Essex Trades' Council*,¹⁰ it appeared that the proprietor of a daily newspaper, determined to use plate matter in the makeup of his paper, notwithstanding the interdictive resolution of the local typographical union, of which all his employes were at the time members. The union thereupon withdrew its endorsement and among other acts, personal application was made by it to actual advertisers, by the distribution of printed circulars and resolutions of the societies, suggesting that they discontinue their advertising therein, even if they had made contracts to so advertise and a threat was made in the guise of a suggestion, that if they did continue to do so, they would also incur the enmity and opposition of organized labor. In consequence the circulation of the paper was considerably reduced, and several advertisers withdrew their advertisements. It was held that an actionable wrong had been committed, and that an injunction would issue against the continuance of such acts, because the remedy not only involves a multiplicity of suits, but the threatened damage is irreparable. "No more vulnerable object," it was said, "could be presented for the operation of a boycott than the advertising columns of a newspaper. They bear on their face the only information necessary as to the salient points of attack. To successfully appeal to a legal tribunal for redress for injuries caused by boycotting the advertisers, would involve waiting until all the damage was done, or the bringing innumerable suits successively, as the damage was ascertainable." In *Hopkins v Oxley*

⁸ *Barr v Essex Trade Council*, 53 39 Wash. 531, 81 Pac. 1069, 4 L. R. N. J. Eq. 101, 30 Atl. 881. A. N. S. 302.

⁹ *Jensen v Cooks' & Waiters' Union*, ¹⁰ 53 N. J. Eq. 101, 30 Atl. 881.

Stave Co.,¹¹ it was held that a combination of labor unions to compel a manufacturer to cease to use certain kinds of machinery in the manufacture of barrels, by notifying purchasers thereof to cease buying them and inducing organized labor everywhere not to buy merchandise packed in them is an unlawful conspiracy and will be enjoined. Some stress was placed on the fact that by such combination, if successful, the public at large would be deprived of the benefits to be derived from a labor saving machine apparently of great utility. This, however, is of little importance because the use of a boycott is the use of unlawful means and it is immaterial whether the end sought to be attained is lawful or not. In *Casey v Cincinnati Typographical Union*,¹² the union insisted that complainant should unionize his office and subscribe to its rules and regulations and adopt its scale of wages. Upon his refusal to accede to these demands, placards were posted prominently, urging all people to refrain from patronizing complainant's paper, and circulars were addressed to his customers of like import, threatening loss of patronage upon their failure to comply with these demands and that the hostility of organized labor would be incurred. An injunction was granted to restrain the continuance of these acts. In *Mathews v Shankland*,¹³ it appeared that plaintiff who conducted a newspaper on the "open shop" plan was requested by a typographical union some of whose members were in his employ, to unionize his plant and adopt the union scale of wages which he refused to do. The union then called a strike against him and its members walked out. Immediately afterwards it passed a resolution that the business men of the community be notified that plaintiff maintained an "unfair" shop, that it had discharged its union men—which was untrue—and filled their places with labor imported from another city thus inflicting great hardship on many families. It was ordered that copies of the resolution be forwarded to every firm advertising in plaintiff's paper and that all organized labor be instructed not to patronize and not to advertise in plaintiff's paper. This resolution was sent to all the subordinate unions in the city where the paper was published, which adopted the resolutions and issued circulars to the patrons of and advertisers in plaintiff's paper, threatening that

¹¹ 83 Fed 912, 28 C. C. A. 99.

¹² 56 N. Y. Suppl. 123, 25 Misc. 604.

¹³ 45 Fed. 135, 12 L. R. A. 193.

continued patronage meant loss of support from the army of workers who composed the many labor unions of the city. The typographical union also issued to advertisers and the public circulars charging the blame of the contest wholly to the plaintiff and stating that the fight was to be continued without abatement, and organized a paper in which it made libellous attacks on plaintiff and frequently threatened advertisers of plaintiff with loss of patronage. As a result of these acts prominent business concerns ceased advertising in plaintiff's paper. It was held that plaintiff was entitled to an injunction against the continuance of these acts. In *Alfred W. Booth & Bro. v Burgess*,¹⁴ it was held that officers and agents of labor unions will be enjoined from calling strikes of their members in the establishments of customers and patrons of a manufacturer who has declared for "the open shop," in order to force them to cease dealing with such manufacturer, and thereby coerce him into unionizing his shop. In *Thomas v Cincinnati etc. R. Co.*,¹⁵ it was held that a combination of unions of railway employes to incite the employes of all railways in the country to suddenly quit their service, without any dissatisfaction with the terms of their own employment, to paralyze utterly all the traffic by which people live, and starve the railway companies and the public into compelling a manufacturer of cars with whom the railroad employes had no relations of any sort, to do something which neither the companies nor the public have the right to compel him to do—namely to raise the wages of his employes—is an unlawful conspiracy at common law. In *Lohse Patent Door Co. v Fuelle*,¹⁶ and *Chas. A. Olcott Planing Mill Co. v Fuelle*,¹⁷ it was held that the declaring and prosecution of a boycott in furtherance of a combination by members of a labor union composed of carpenters and woodworkers, to injure a person's business on his refusal to unionize his shop, by intimidating his customers through threats of strike in their places of business, if they used material manufactured by him would be enjoined. In *Gray v Building Trades 'Council*,¹⁸ it

¹⁴ 72 N. J. Eq. 181, 65 Atl. 226.

¹⁵ 62 Fed. 803, 4 Inters. Com. Rep. 788.

¹⁶ 215 Mo. 421, 114 S. W. 997, 22 L. R. A. N. S. 607, (distinguishing *Marx Haas Clothing Co. v Watson*, 168 Mo. 133, 67 S. W. 391, 56 L. R.

A. 951, 91 Am. St. Rep. 440, on the ground that the object of that suit was to enjoin publication of a boycott.)

¹⁷ (Mo.) 114 S. W. 1093.

¹⁸ 91 Minn. 171, 97 N. W. 663, 103 Am. St. Rep. 477, 63 L. R. A. 753.

was held that where on refusal of a manufacturer to employ union labor only, a voluntary association composed of delegates of various labor unions, threatens his customers that unless they desist from patronizing him the association will call strikes of members of the various unions represented by it in the employ of such customers, and thereby injure their business, the continuance of such acts will be enjoined.

§ 103. — —Use of force or violence to cause withholding of patronage.

An injunction will be granted to restrain the members of a combination engaged in a boycott from congregating around the place of business of the person against whom the boycott is declared and using force or threats thereof to prevent his customers from dealing with him.¹⁹

§ 104. — —Coercing dealers in material or products necessary to a person's business into not selling to him.

Where a combination of workmen, for the purpose of injuring a person's business, threaten strikes in the establishments of those dealing in material or products necessary to his business, in case they have any dealings with him, he would be entitled to an injunction against the continuance of such acts.²⁰

§ 105. — —Coercing breach of contract by independent contractor.

Where a labor union, because of the refusal of an employer of labor to recognize their association in a formal way, threatens strikes in the establishments of independent contractors who have engaged to do certain work for him, some of whom in consequence deliberately break their contracts, an injunction against the continuance of such acts will be awarded.²¹

¹⁹ *Goldberg, Bowen & Co. v Stablemen's Local Union*, 149 Cal. 429, 86 Pac. 806, 117 Am. St. Rep. 144, 8 L. R. A. N. S. 460; *Pierce v Stablemen's Union (Cal.)* 103 Pac. 324; *Butterick Publishing Co. v Typographical Union No. 6*, 100 N. Y. Suppl. 292; 50 Misc. 1; *Jensen v Cooks' & Waiters' Union*, 39 Wash. 531, 81 Pac. 1069, 4 L. R. A. N. S. 302. And see

Beck v Railway Teamsters' Protective Union, 118 Mich. 497, 77 N. W. 13, 74 Am. St. Rep. 421, 42 L. R. A. 407.

²⁰ See *Moore v Bricklayers' Union*, 10 Ohio Dec. (Reprint) 648, 23 W. L. B. 48; *Temperton v Russell*, (1893) 1 Q. B. 715, 62 L. T. 78.

²¹ *Beattie v Callahan*, 67 N. Y. App. Div. 14, 73 N. Y. Suppl. 518.

§ 106. — — **Publication of libellous matter coercive in its nature.**

The rule is well-settled that a court of equity has no jurisdiction to restrain a mere libel or slander.²² An interesting question on which the courts are not entirely in accord is whether an injunction may be granted to prevent a union or its members from uttering or publishing slanderous or libellous matter concerning a person where its nature and purpose is to intimidate and coerce others into refraining from having business relations with him. According to the weight of authority such acts may be enjoined. The view taken by these decisions is that suits of this character are not suits to enjoin a libel or slander but to enjoin acts the effect of which is to injure a person's business by coercing others through fear of loss to themselves to refrain from having any business relations with him and that the issuance of an injunction to prevent such acts does not infringe the constitutional provisions which in substance declare that every citizen may freely speak, write and publish his sentiments being responsible for the abuse of the right, and that no law shall be passed to restrain or abridge the liberty of speech or freedom of the press.²³ "There is a clear distinction," it is said, "between suits to enjoin the publication of a libel and one to restrain acts to intimidate persons from dealing with another.

²² *Injunctions*, 22 Cyc. pp. 900, 901 and cases cited; Bispham's Equity (4th ed.) 465, n. and cases cited.

²³ *California*.—Jordahl v Hayda, 1 Cal. App. 696, 65 Pac. 1079.

District of Columbia.—Buck Stove & Range Co. v American Federation of Labor, 35 Wash. L. Rep. 797, 70 Alb. L. J. 8, (affirmed in 37 Wash. L. Rep. 154.)

Illinois.—Hey v Wilson, 232 Ill. 389, 83 N. E. 928, 122 Am. St. Rep. 119, 16 L. R. A. N. S. 85.

Maryland.—My Maryland Lodge v Adt, 100 Md. 283, 59 Atl. 721, 68 L. R. A. 752.

Massachusetts.—Reynolds v Davis, 198 Mass. 294, 84 N. E. 457, 14 L. R. A. N. S. 162. See also Sherry v Perkins, 147 Mass. 212, 17 N. E. 307, 9 Am. St. Rep. 689.

Michigan.—Beck v Railway Teamsters' Protective Union, 118 Mich. 497, 77 N. W. 13, 74 Am. St. Rep. 421, 42 L. R. A. 407.

New Jersey.—Barr v Essex Trade Council, 53 N. J. Eq. 101, 30 Atl. 881.

New York.—Mathews v Shankland, 56 N. Y. Suppl. 123, 25 Misc. 604.

United States.—Rocky Mountain Bell Telephone Co. v Montana Federation of Labor, 156 Fed. 822; Shine v Fox Bros. Mfg. Co., 156 Fed. 357, 86 C. C. A. 311; Seattle Brewing Co. v Hansen, 144 Fed. 1011; Loewe v California Federation of Labor, 139 Fed. 71; Coeur D'Alene Consolidated etc. Min. Co. v Miners' Union of Wardner, 51 Fed. 260, 19 L. R. A. 382; Cassidy v Cincinnati Typographical Union, 45 Fed. 135, 12 L. R. A. 193; Emack v Kane, 34 Fed. 47.

In the one, when the acts complained of consist of such misrepresentations of a business that they tend to its injury and damage to its proprietor, the offense is simply a libel; and in this country the courts have with great unanimity held that they will not interfere by injunction, but that the injured party must rely upon his remedy at law. On the contrary, when the attempt to injure consists of acts or words which will operate to intimidate and prevent the customers of a party from dealing with, or laborers from working for him, the courts have, with nearly equal unanimity, interposed by injunction. In the one case it is an injury to a man's business by libeling it; in the other, by force, threats, and other like means, he is prevented from pursuing it; while the damage might be as great in the one case as in the other—but most likely with different consequences to the good order and peace of the community—the courts have determined upon different remedies.²⁴ And in another case it was said, "It is urged that courts of equity will not restrain the publication of a libel, and that this boycotting circular is a libel, the publication and circulation of which cannot be enjoined. The same claim was made that courts of equity have no jurisdiction to restrain the commission of a crime. But the answer is and always has been, that parties cannot interpose this defense, when the acts are accompanied by threats, express or covert, or intimidation or coercion, and the accomplishment of the purpose will result in irreparable injury to and the destruction of property rights. If all there was to this transaction was the publication of a libelous article the position would be sound."²⁵ In accordance with these views it was held that a suit to enjoin the issuance of circulars stating that a newspaper company had broken its promise to unionize its office and threatening its customers with loss of patronage, unless they withdrew their patronage from it, in pursuance of a conspiracy to compel the company to yield its right to select its own workmen and submit itself to the control of the union and allow the union to regulate prices for it, and to determine whom it should employ and discharge, is not a suit to enjoin a libel and that an injunction would be granted.²⁶ On the other

²⁴ *Coeur D'Alene Consolidated etc. Min. Co. v Miners' Union of Wardner*, 51 Fed. 260, 19 L. R. A. 382.

²⁵ *Beck v Railway Teamsters' Protective Union*, 118 Mich. 497, 77 N.

W. 13, 74 Am. St. Rep. 44, 42 L. R. A. 407.

²⁶ *Cassidy v Cincinnati Typographical Union*, 45 Fed. 135, 12 L. R. A. 193.

hand there are decisions which maintain the contrary view and hold that the issuance of such an injunction is in violation of the constitutional provisions mentioned,²⁷ and also of the constitutional provision that no person shall be deprived of life liberty or property without due process of law.²⁸ The reasoning of one of the cases in which the question was considered at great length is as follows: "A constitutional provision declaring that no law shall be passed impairing the freedom of speech; that every person shall be free to say, write, or publish whatever he will, on any subject, being responsible for all abuse of that liberty, makes no distinction and authorizes no difference to be made by courts or legislatures between a proceeding set on foot to enjoin the publication of a libel and one to enjoin the publication of any other sort or nature, however injurious it may be, or to prohibit the use of free speech, free writing, on any subject whatever, because wherever the authority of injunction begins, there the right of free speech, free writing or free thinking ends. No halfway house stands on the highway between prevention and absolute freedom. The rights established by the constitutional provision referred to, can neither be impaired by the legislature, nor hampered nor denied by the courts." The purpose of the provision 'is penalty or punishment, and not prevention. Because if prevention exists, then no opportunity can possibly arise for one becoming responsible by saying, writing or publishing,' whatever he will on any subject. The two ideas, the one of absolute freedom to say, write or publish whatever he will on any subject, coupled with the responsibility therefor, and the other idea of preventing any such free speech, free writing, or free publication cannot co-exist."²⁹ It was also said that the fact that defendants are insolvent and that for that reason plaintiff has no adequate remedy at law does not in any way

²⁷ *Marx & Haas Jean Clothing Co. v Watson*, 168 Mo. 133, 67 S. W. 391, 90 Am. St. Rep. 440, 56 L. R. A. 951; *Lindsay v Montana Federation of Labor*, 37 Mont. 264, 96 Pac. 127, 127 Am. St. Rep. 722. And see *Life Association of America v Boogher*, 3 Mo. App. 173; *Society v Roosevelt*, 7 Daly (N. Y.) 188.

²⁸ *Marx & Haas Jean Clothing Co. v Watson*, 168 Mo. 135, 67 S. W. 391,

90 Am. St. Rep. 440, 56 L. R. A. 951.

²⁹ *Marx & Haas Jean Clothing Co. v Watson*, 168 Mo. 135, 67 S. W. 391; 90 Am. St. Rep. 440, 56 L. R. A. 951. And see *Life Ass'n of America v Boogher*, 3 Mo. App. 173; and dissenting opinion of Shepard, C. J., in *Buck Stove and Range Co. v American Federation of Labor*, 37 Wash. L. Rep. 154.

alter the case. "*The constitution is no respecter of persons; the impecunious man 'who hath not where to lay his head,' has as good right to free speech, etc., as does the wealthiest man in the community.*"³⁰ In accordance with these views it was held that courts of equity have no power to enjoin the distribution of circulars issued by a labor union, stating that plaintiff was "unfair," and asking the recipient of the circulars to write to the manufacturer requesting a settlement of the dispute with its employes, and stating that their patronage of it would cease until such settlement was made; nor can they enjoin the acts of committees appointed by the union from personally soliciting merchants and business men to withhold their patronage from such manufacturer, and threatening that unless they did so, they would lose the patronage of the union and its friends, no threats of violence being made.³¹

§ 106a. — Putting on unfair list.

As heretofore shown,³² there are at least two jurisdictions where in furtherance of a lawful strike, the strikers may combine to withhold or threaten to withhold beneficial business relations from their employer's customers to compel them to withhold their patronage from him, and a publication of his name on an unfair list would be lawful and not subject to restraint by injunction even though it were construed as importing a threat by the combination publishing it, that its members would withhold beneficial business relations from any one having business relations with the person published as unfair.³³ But in most jurisdictions such a threat is unlawful and if the publication is to be construed as amounting to such threat, it should be enjoined. The better opinion is however that it does not necessarily import such threat, and is not unlawful and in consequence should not be enjoined unless it is shown to be a threat to withhold beneficial business relations from those who patronize the person with whom the combination making the publication has a trade dispute.³⁴ In a case of engrossing interest because of the

³⁰ The Missouri case is followed on this proposition by *Lindsay v Montana Federation of Labor*, 37 Mont. 264, 96 Pac. 127, 127 Am. St. Rep. 722.

³¹ *Marx & Haas Jean Clothing Co. v Watson*, 168 Mo. 135, 67 S. W. 391, 90 Am. St. Rep. 440, 56 L. R. A. 951.

³² See *supra* this chapter, section 83.

³³ See *J. F. Parkinson Co. v Building 'Trades' Council*, 154 Cal. 581, 98 Pac. 1027, 21 L. R. A. N. S. 550; *Lindsay v Montana Federation of Labor*, 37 Mont. 264, 96 Pac. 127, 127 Am. St. Rep. 722.

³⁴ See *supra* this chapter, section 83.

tremendous effectiveness of the boycott against which an injunction was asked, and the prominence of the labor leaders who planned and put it into operation, one of the instrumentalities for rendering the boycott effective, was the publication in the leading journal of the American Federation of Labor, and other journals devoted to the interests of organized labor, of complainant company in the "We Don't Patronize" or "Unfair" list. This case was heard in the Supreme Court of the District of Columbia, and on the evidence it was found that such publication constituted a symbol indicating to the members of the Federation that a boycott was on and should be observed. An injunction of a most sweeping nature was awarded complainant which among other things prohibited "defendants, their agents and attorneys, from printing, issuing, publishing or distributing through the mails, or in other manner, any copies or copy of the American Federationist, or any other printed or written newspaper, magazine, circular letter or other document or instrument whatsoever, which shall contain or in any manner refer to the name of the complainant, its business or its product in the 'We Don't Patronize' or the 'Unfair' list of the defendants, or any of them, their agents, servants, attorneys, confederates, or other person or persons acting in the aid of or in conjunction with them, or which contains any reference to the complainant, its business or product in connection with the term 'Unfair' or with the 'We Don't Patronize' list or with any other phrase, words or words of similar import.'" ³⁵ On appeal to the Court of Appeals this part of the injunction was materially modified. The court said: "The decree in this case goes too far when it enjoins the publication or distribution through the mails or otherwise of the Federationist or other periodicals or newspapers containing any reference to complainant, its business, or product, as in the 'We Don't Patronize' or 'Unfair' list of the defendants. The court below found, and in that finding we concur, that this list in this case constitutes a talismanic symbol indicating to the membership of the Federation that a boycott is on and should be observed. The *printing* of this list, therefore, was what the court sought to prevent and what, in our opinion, the court had power to prevent; but the decree should stop there and not attempt to regulate the publication and distribution of other matter over which the court has no control. In other

³⁵ Buck Stove & Range Co. v American Federation of Labor (D. C.) 35 Wash. L. Rep. 797, 70 Alb. Law J. 75.

words, this branch of the decree should merely prohibit the printing of complainant, its business, or product, in the 'We Don't Patronize' or 'Unfair' list *in furtherance of the boycott*. The italicized words should be added, for, when the conspiracy is at an end, the Federation will have the same right that any association or individual now has to comment upon the relations of complainant with its employees. It is the existence of the conspiracy that warrants the court in prohibiting the printing of this list. Manifestly, when the conspiracy ends the prohibition ought also to end."³⁶ The decree was modified in accordance with these views.

§ 107. Who entitled to injunction.

The right to operate a plant of any character is a property right and although the operator is not the owner of the plant, he is nevertheless entitled to an injunction to restrain a boycott which seriously interferes with the carrying on of his business.³⁷ So it has been held that bond-holders of a mining company secured by a trust deed on its property, the value of which depends upon the ability of the company to operate at a profit the mining of its coal and the meeting of its interest charges, and the payment of the principle of its indebtedness when due, have such interest in the property as entitles them to maintain a bill to enjoin a boycott executed by preventing employes of the company, or those willing to work for it, from so doing by violence or intimidation.³⁸

§ 108. Against whom injunction awarded.

It is elementary law, that where a combination is formed for an unlawful purpose, the act of one done to effect the common object is the act of all for which each is responsible.³⁹ The fact that some

³⁶ American Federation of Labor v Buck Stove & Range Co. (D. C.) 37 Wash. L. Rep. 154, 162.

³⁷ Goldfield Consolidated Mines Co. v Goldfield Miners' Union, 159 Fed. 500.

³⁸ Carter v Fortney, 170 Fed. 465.

³⁹ Franklin Union v People, 220 Ill. 355, 77 N. E. 176, 4 L. R. A. N. S. 1001, 110 Am. St. Rep. 248; Flannery v People, 126 Ill. App. 526; Christensen v People, 114 Ill. App. 4; George

Jonas Glass Co. v Glass Bottle Blowers' Ass'n, 72 N. J. Eq. 653, 66 Atl. 953; Mathews v Shankland, 56 N. Y. Suppl. 123, 25 Misc. 604; Humphreys Mfg. Co. v Mathias, 12 Ohio Dec. N. P. 517; Perkins v Rogg, 11 Ohio Dec. (Reprint 585); New York, etc. R. Co. v Wenger, 9 Ohio Dec. (Reprint) 815; Dayton Mfg. Co. v Metal Polishers' Union, 11 Ohio Dec. 643; *Conspiracy*, 8 Cyc. 657, 658, and cases cited. And see Munday v Terrall, 87 Miss. 282, 39 So. 477.

of the members of the combination did not engage in the commission of the acts complained of constitutes no reason for denying an injunction against them.⁴⁰ Hence if a combination is formed by striking employes to boycott the employer by coercing other employes to join in the strike, and some of them use violence or intimidation to effect this purpose all should be enjoined,⁴¹ and where it is shown that there is a common united purpose on the part of the members of several unions to boycott a party, the members of each union are liable for the acts of the members of one of them done in furtherance of the boycott.⁴² It is likewise elementary law that those who aid and abet in a conspiracy are equally liable with the principals.⁴³ Hence a trade council occupying the relation of a co-operative organization composed of delegates of several unions is liable as an accessory where by official action it gives its moral countenance and support and furnishes money to a union in aid of a strike which they seek to render effective by a boycott.⁴⁴ So a labor union whose officers as such were advisers, counsellors, organizers and supporters of the strikers, is, as well as its officers, properly a party to an order enjoining a boycott.⁴⁵ And where a union through its officers and members establishes a system of pickets around an employer's plant, and the pickets use violence and threats to prevent others from working for the employer, it will be responsible for these acts, though it instructed the pickets not to commit unlawful acts, where it knew that unlawful acts were being committed and took no measure to prevent a continuance thereof.⁴⁶ It has also been held that where several local unions order a strike and encourage it by the payment of wages to individuals to carry it on they are liable for all the results that can properly be traced to their original action, and they will be held chargeable with the acts of intimidation, violence and coercion employed by the strikers, and will be enjoined from the further

⁴⁰ Dayton Mfg. Co. v Metal Polishers' Union, 11 Ohio Dec. 643.

⁴¹ New York etc. R. Co. v Wenger, 9 Ohio Dec. (Reprint) 815.

⁴² Mathews v Shankland, 56 N. Y. Suppl. 123, 25 Misc. 604.

⁴³ Hillenbrand v Building Trades Council, 14 Ohio Dec N. P. 628.

⁴⁴ Hillenbrand v Building Trades Council, 14 Ohio Dec. N. P. 628.

⁴⁵ Piano & Organ Workers' International Union v Piano & Organ Supply Co., 124 Ill. App. 353; American Federation of Labor v Bucks Stove and Range Co. (D. C.) 37 Wash. L. Rep. 154.

⁴⁶ Union Pac. R. Co. v Ruef, 120 Pac. 102. See also Allis-Chalmers Co. v Iron Moulders' Union, 150 Fed. 155.

commission of such acts.⁴⁷ But without proof that a national union as a body encouraged the unlawful acts of local unions in connection with a strike ordered by them, an injunction should not be granted against it.⁴⁸ Although its president should be enjoined when, notwithstanding his public utterances against unlawful disturbances in connection therewith, he has encouraged the same, and is, in fact, in charge of the strike, and his utterances have also been at variance with those in which he counselled peace.⁴⁹ On the other hand where the purpose for which a combination of workmen is formed is lawful, and some of them do unlawful acts in furtherance of such purpose, the injunction should go against those alone of the combination who committed the unlawful acts.⁵⁰ Thus where two or three individual members only of unions whose members are engaged in a strike use threats against other members to prevent them from working and there is evidence that may justify the inference that they will continue to employ threats of the same character to deter others from seeking employment with plaintiff an injunction may be awarded against them but not against the unions or their officers or the large numbers of individual members who made no threats.⁵¹ And where it is shown that all the members of a union except a very limited number at all times attempted to effectuate the objects of a justifiable strike in which they were engaged by peaceable means and without violence or intimidation towards those continuing in the service of or seeking employment with the party against whom the strike was directed, the injunction will go only against those of the members guilty of such unlawful acts. "The strike being properly conceived and conducted by the great majority of members, its purpose will not

⁴⁷ *Connett v United Hatters of North America*, (N. J.) 74 Atl. 188.

⁴⁸ *Connett v United Hatters of North America*, (N. J.) 74 Atl. 188.

⁴⁹ *Connett v United Hatters of North America*, (N. J.) 74 Atl. 188.

⁵⁰ *California*.—*J. F. Parkinson Co. v Building Trades Council*, 154 Cal. 581, 98 Pac. 1027, 21 L. R. A. N. S. 550.

Indiana.—*Karges Furniture Co. v Amalgamated Woodworkers' Local Union*, 165 Ind. 421, 75 N. E. 877, 2 L. R. A. N. S. 788.

New York.—*Thomas Russell & Sons v Stampers' etc. Union*, 107 N. Y. Suppl. 303, 57 Misc. 96.

Ohio.—*Perkins v Rogg*, 11 Ohio Dec. (Reprint) 585.

Virginia.—*Everett-Waddey Co. v Richmond Typographical Union*, 105 Va. 188, 53 S. E. 273, 5 L. R. A. N. S. 792.

⁵¹ *J. F. Parkinson Co. v Building Trades Council*, 154 Cal. 581, 98 Pac. 1027, 21 L. R. A. N. S. 550.

be defeated by the unlawful conduct of a few rowdies and law-breakers that may be found among them.”⁵² It is also held that where defendants are made such in their individual capacity, and not in any organized capacity, such of them as are not shown to have participated in the unlawful acts complained of should not be included in the injunction. There must either be evidence of unlawful acts committed by such parties or the evidence must show that they belong to the class or the organization of those enjoined.

“It would be a gross injustice,” it was said, “to attach to persons who have not been shown to be participants in these transactions the stigma of an injunction, or to make them—as they might be without further orders of the court—subject to the payment of any costs which necessarily accrue in such a case.”⁵³ It has accordingly been held that where suit is instituted against numerous persons as individuals to enjoin intimidation by them of complaint’s employes to prevent them from working for him, and there is no averment of a combination among them to do such acts, the injunction should go against such of the defendants only as are shown to have committed the unlawful acts charged, and a preliminary injunction against all the defendants will be dissolved as to those who were not shown to have committed such acts.⁵⁴

§ 109. Who are bound by injunction.

The question as to who are bound by injunction, whether against a boycott or other unlawful acts is considered in a subsequent chapter.⁵⁵

⁵² *Karges Furniture Co. v Amalgamated Woodworkers’ Local Union*, 165 Ind. 421, 75 N. E. 877, 2 L. R. A. N. S. 788.

⁵³ *Pope Motor Car Co. v Keegan*, 150 Fed. 148; *Union Pac. R. Co. v Ruef*, 120 Fed. 102. See also as sustaining this view *American Federation of Labor v Buck Stove and Range Co.* (D. C. App.) 37 Wash. L.

Rep. 154, where an injunction which included counsel for defendants was modified by striking out their names, there being no evidence in any way connecting them with the boycott enjoined.

⁵⁴ *Munday v Terrell*, 87 Miss. 282, 39 So. 477.

⁵⁵ See *Infra* chapter XVIII, *Contempt*.

CHAPTER VIII.

PLEADING AND PRACTICE IN ACTION ARISING OUT OF BOYCOTTS OF CAPITAL.

- § 110. Actions for damages.—Form of action and allegations.
- § 111. Parties.
- § 112. Evidence.
- § 113. Suits for injunction.—The Bill.—Necessary allegations.
- § 114. Prayer.
- § 115. Amendments.
- § 116. Discovery.
- § 117. Parties.
- § 118. Preliminary injunctions.—Their nature and purpose.
- § 119. Hearing and allowance in general.
- § 120. Evidence.
- § 121. Grounds for denial.
- § 122. Bond.
- § 123. Dissolution before final hearing in general.
- § 124. Denials of acts charged or right to commit them as ground to dissolve before final hearing.
- § 125. Operation and effect of dissolution before final hearing.
- § 126. Final hearing and permanent injunction.
- § 127. Certainty required in decree or order.
- § 128. Review.
- § 129. Criminal prosecutions.—Indictment.
- § 130. Evidence.

§ 110. Actions for damages.—Form of action and allegations.

Case is the proper form of action for the recovery of damages caused by a boycott.⁵⁶ The allegation of combination or conspiracy does not change the nature of the action from one purely on the case, subject to all the settled rules of such action.⁵⁷ In an action to recover damages for boycotts as in other civil actions in which

Cross References.

For forms of indictments or informations for boycotting, see *Appendix* forms Nos. 7, 8, 9.

For *Forms of Bills to Enjoin Boycotts*, see *Appendix*, forms Nos. 2 to 6 inclusive.

⁵⁶ See *Purinton v Hinchliff*, 219 Ill.

156, 76 N. E. 47, 109 Am. St. Rep. 322, 2 L. R. A. N. S. 824; *E. R. Patch Mfg. Co. v Protection Lodge*, 77 Vt. 294, 60 Atl. 74, 107 Am. St. Rep. 765.

⁵⁷ *Conspiracy* 8 Cyc. 674, and cases cited.

a conspiracy is charged, the gravamen of the charge is not the conspiracy, but it may be pleaded and proved in aggravation, and to enable the plaintiff to recover against all the tort-feasors.⁵⁸ And inasmuch as a conspiracy of itself furnishes no ground of action for damages, but must be executed to the injury of another,⁵⁹ it is necessary to allege that acts were committed in furtherance thereof, that such acts resulted in damage to plaintiff and that the damage was the natural and proximate result of such acts.⁶⁰

§ 111. —Parties.⁶¹

In the absence of some statute authorizing it, a union cannot be sued in its common name, but all the members must be joined as defendants in an action to recover damages resulting from a boycott.⁶² So in the absence of statutory authorization, the equity rule in respect of representative suits has no application to actions at law for damages and such actions cannot be brought against a few of the officers or members as representing the whole membership of the union.⁶³ However, in jurisdictions where the equity rule is adopted by statute, and the distinction between legal and equitable actions so far as practice is concerned largely if not entirely abolished, it has been held that such rule is applicable in actions for damages.⁶⁴ In many jurisdictions, also, the rule requiring all the members to be joined has been changed by statute authorizing suits against voluntary associations in their common name.⁶⁵

§ 112. —Evidence.

In an action for damages caused by coercing plaintiff's customers into withholding their patronage from him, declarations by such

⁵⁸ See *Conspiracy* 8 Cyc. 624 and cases cited.

⁵⁹ *Conspiracy* 8 Cyc. 645, and cases cited. And see *Davitt v American Bakers' Union*, 124 Cal. 99, 56 Pac. 775.

⁶⁰ *Conspiracy* 8 Cyc. 675 and cases cited.

⁶¹ See also *Infra* Chapter XVII *How Actions Brought by or Against Labor Unions*.

⁶² *Branson v Industrial Workers of the World*, (Nev.) 95 Pac. 354. And

see *Infra* Chapter XVII, *How Actions Brought by or Against Labor Unions*, Section 214.

⁶³ *Branson v Industrial Workers of the World*, (Nev.) 95 Pac. 354.

⁶⁴ *Branson v Industrial Workers of the World*, (Nev.) 95 Pac. 354.

⁶⁵ See *Infra* Chapter XVII, *How Actions Brought by or Against Unions*, Sections 215, 216. And see *E. R. Patch Mfg. Co. v Protection Lodge*, 77 Vt. 294, 60 Atl. 74, 107 Am. St. Rep. 765.

customers of their reason for withdrawing their patronage, made at the time of such withdrawal are competent as part of the *res gestæ*.⁶⁶ And in an action against a labor union to recover damages caused by a conspiracy between defendant and other unions and their members to injure plaintiff's business by coercing workmen not to continue in or not to enter his employ, evidence that an employe of plaintiff, who was a member of a union other than defendant, told plaintiff, that he had been ordered to strike by his union, that he would do so, and afterwards withdrew from the union, and return to work, that plaintiff told him he would keep his place for him and that he quit work and did not return, was properly admitted in corroboration of evidence previously offered to show a conspiracy between defendant and the union to which such member belonged, although neither defendant nor such union could be affected by his declarations which were not in furtherance of the common design.⁶⁷ Communications to plaintiff, bearing defendant's seal and purporting to come from defendant and its "committee" are admissible though defendant is not a corporation. Its impress upon the papers sent is a circumstance proper to be considered with other evidence in the case tending to show that the "committee" was a committee of defendant and that the papers emanated from it.⁶⁸ Testimony of a witness not a member of defendant union that he went out on a strike ordered by defendant, on the promise of a money consideration by one of defendant's members, was admissible, there being some evidence of a conspiracy between defendant and the union of which the witness was a member.⁶⁹ And evidence as to acts of violence committed by one not a member of defendant, and not shown to have been employed by it, is not alone admissible to prove the conspiracy alleged but if the other evidence in the case tended to show it, then such acts were properly admissible as an incident in it.⁷⁰

⁶⁶ *Moore v Bricklayers' Union*, 10 Ohio Dec. (Reprint) 645, 23 W. L. B. 48.

⁶⁷ *E. R. Patch Mfg. Co. v Protection Lodge*, 77 Vt. 294, 60 Atl. 74, 107 Am. St. Rep. 765.

⁶⁸ *E. R. Patch Mfg. Co. v Protection*

Lodge, 77 Vt. 294, 60 Atl. 74, 107 Am. St. Rep. 765.

⁶⁹ *E. R. Patch Mfg. Co. v Protection Lodge*, 77 Vt. 294, 60 Atl. 74, 107 Am. St. Rep. 765.

⁷⁰ *E. R. Patch Mfg. Co. v Protection Lodge*, 77 Vt. 294, 60 Atl. 74, 107 Am. St. Rep. 765.

§ 113. Suits for injunction.⁷¹—The bill.—Necessary allegations.

The bill must show complainant's right or title in or to the subject matter of the suit upon which he bases his claim for relief, and for this purpose must allege every fact necessary to show such right or title.⁷² And every fact necessary to entitle complainant to relief must be alleged.⁷³ The bill must show that complainant has or will sustain substantial injury from the acts complained of,⁷⁴ and that the remedy at law is inadequate, and that the damage will be irreparable.⁷⁵ For this purpose it is necessary to state facts. A mere statement of the conclusions of the pleader will not be sufficient.⁷⁶ A pleading which asks for the interposition of equitable relief requires the statement of the specific facts upon which relief is sought. Inferences, generalities, presumptions and conclusions have no place in such a pleading.⁷⁷ The facts should be stated so distinctly and completely that the court may, from the face of the bill, see that it has jurisdiction and tell precisely what decree should be rendered supposing the bill to be true.⁷⁸ Mere evidentiary facts need not be pleaded however. It is sufficient to state the ultimate facts without the details and circumstances comprised within it or which go to prove it.⁷⁹ In applying the general principles stated,

⁷¹ For forms of injunctions and restraining orders against various kinds of boycotts, see *Infra Appendix*, forms Nos. 18 to 34 inclusive.

For forms of bills to enjoin boycotts, see *Infra Appendix*, forms Nos. 2 to 6 inclusive.

⁷² *Equity* 16 Cyc. 220, 221, 223 and cases cited; 1 Daniel Ch. Pr. 466; and see *Beck v Railway Teamsters' Protective Union*, 118 Mich. 497, 77 N. W. 13, 42 L. R. A. 407, 74 Am. St. Rep. 44; *United States Heater Co. v Iron Moulders' Union*, 129 Mich. 354, 88 N. W. 889; *Hamilton-Brown Shoe Co. v Saxey*, 131 Mo. 212, 32 S. W. 1106, 52 Am. St. Rep. 622; *Loewe v Lawlor*, 208 U. S. 274, 28 Sup. Ct. 301, 52 L. ed. 488.

⁷³ *Equity* 16 Cyc. 220, 221, 227, 228 and cases cited; 1 Daniel Ch. Pr. 466.

⁷⁴ *Injunctions* 22 Cyc. 927, 928 and cases cited; *Equity* 16 Cyc. 235 and

cases cited. And see *Longshore Printing & Publishing Co. v Howell*, 26 Ore. 527, 38 Pac. 547, 28 L. R. A. 464, 46 Am. St. Rep. 640, holding that the facts stated should be the proximate cause of complainants' injuries or the apprehension of those threatened and imminent.

⁷⁵ *Injunctions* 22 Cyc. 925, 928, 929 and cases cited.

⁷⁶ *Injunctions* 22 Cyc. 925, 928, 929 and cases cited; *Equity* 16 Cyc. 229 and cases cited.

⁷⁷ *Davitt v American Bakers' Union*, 124 Cal. 99, 56 Pac. 775; *Badger Brass Mfg. Co. Daly*, 137 Wis. 601, 119 N. W. 328. And see *Injunctions* 22 Cyc. 925, 928, 929 and cases cited. *Equity* 16 Cyc. 225 and cases cited.

⁷⁸ *Equity* 16 Cyc. 220, 221 and cases cited; 1 Daniel Ch. Pr. 466.

⁷⁹ *Equity* 16 Cyc. 229 and cases cited; *A. R. Barnes & Co. v Chicago*

the decisions apparently are not in entire accord. It has been held that if the bill asks an injunction against the printing and circulation of false and malicious publications designed for the purpose of procuring a boycott of plaintiff's business, it must set out substantially the contents of the publications complained of. Defendants, and the court, it was said, are entitled to know the character of the publications. Perhaps upon their face, they may not have been injurious, malicious or false.⁸⁰ And where the bill seeks to enjoin striking workmen from the use of violence and intimidation to compel complainant's employes to leave his service and to prevent others who are willing to enter his service from doing so, it has been held that the bill should be detailed, certain and specific, giving facts and circumstances including time and place of each act of coercion, the name of the person coerced, if known, the manner in which he was coerced, and the manner in which and the extent to which it affected or impeded the employer's right to conduct his business in a lawful way. In this case it was said: "In such contests between employers and workmen there is frequent recourse to much strategy, and the law does not uphold that strategy on the part of the employer by which he seeks to obtain a blanket injunction upon a blanket complaint abounding in general conclusions, but lacking in facts and circumstances;"⁸¹ so in another case on a similar state of facts it was held that the bill must allege the particular threats defendants made, what amount or kind of force if any, defendant used, what kind or character of menace was exercised, and how the business was to be boycotted.⁸² On the other hand, it has been held that a bill alleging that defendants established a picket system around complainant's shops, enticed away his employes and resorted to threats, intimidations, and assaults, to accomplish their ends and that they proposed to continue the same conduct in furtherance of their ends, is sufficiently specific.⁸³ And a bill alleging that defendants stationed themselves in the

Typographical Union, 232 Ill. 424, 83 N. E. 940, 14 L. R. A. N. S. 1018. And see *O'Brien v People*, 216 Ill. 354, 75 N. E. 108, 108 Am. St. Rep. 219; *Pierce v Stablemen's Union*, (Cal.) 103 Pac. 325.

⁸⁰ *Davitt v American Bakers' Union*, 124 Cal. 99, 56 Pac. 775.

⁸¹ *Badger Brass Mfg. Co. v Daly*, 137 Wis. 601, 119 N. W. 328.

⁸² *Davitt v American Bakers Union*, 124 Cal. 99, 56 Pac. 775.

⁸³ *A. R. Barnes & Co. v Chicago Typographical Union*, 232 Ill. 424, 83 N. E. 940, 14 L. R. A. N. S. 1018.

streets and alleys and approaches to complainant's place of business and began to "intimidate" the employes, and began a systematic course of "intimidation," and "warned" the employes not to return to work, and assumed a "menacing and threatening" attitude, and now continue to "menace and threaten" said employes; that the employes were willing to work, but were so "frightened and intimidated" that they have refused to continue in the company's employ, and that defendants have intercepted the employes, and have induced them, by "threats and unlawful persuasion," not to enter the company's employ, sufficiently charges acts of the defendants to give the court jurisdiction to pass upon the sufficiency of the bill and is not objectionable as stating mere conclusions of the pleader.⁸⁴

§ 114. — — Prayer.

The bill should contain a prayer for relief, the practice being to ask the special relief desired and to follow this with a prayer for general relief.⁸⁵ It should contain a specific prayer for injunction since the writ will not be granted under the general prayer for relief.⁸⁶ It should also contain a prayer for process that a subpoena issue requiring defendants named to appear and answer the bill and abide by the determination of the court.⁸⁷ Nevertheless, while want of prayer for process renders the bill demurrable, it is a mere technical defect not going to the jurisdiction of the court and where no demurrer is interposed, an injunction rendered thereon is valid and binding.⁸⁸

§ 115. — — Amendments.

The bill may be amended on the hearing of an application for a preliminary injunction,⁸⁹ and under a statute providing that the court may at any time permit either of the parties to amend any defect in the process or pleadings, upon such conditions as it shall in its discretion and by its rule prescribe, it may be amended

⁸⁴ *O'Brien v People*, 216 Ill. 354, 75 N. E. 108, 108 Am. St. Rep. 219.

⁸⁵ *Equity* 16 Cyc. 224 and cases cited. *Injunctions* 22 Cyc. 930 and cases cited.

⁸⁶ 2 High on Injunctions, (4th ed.) § 1577.

⁸⁷ *Equity* 16 Cyc. 226 and cases cited; *Injunctions* 22 Cyc. 930 and cases cited.

⁸⁸ *United States v Agler*, 62 Fed. 824.

⁸⁹ *American Steel & Wire Co. v Wire Workers' & Die Makers' Union*, 90 Fed. 598.

to show that certain defendants are officers and members of a union, in order that it may be bound by the injunction.⁹⁰ If the bill is defective in not containing a specific prayer for injunction, the defect may be cured by obtaining leave of the court to amend by adding the necessary prayer.⁹¹ And where a bill maintainable only on the ground of diverse citizenship, brought by several members of an association in a representative capacity, fails to show, as is necessary, that all the parties on one side of the controversy have the right by diverse citizenship to sue all the parties on the other side, the defect may be cured by dismissing those of the defendants, who are citizens of the same states as some of the complainants, and who are not indispensable parties. The jurisdiction of the court depends upon the citizenship of the parties before the court and not of those whom they may represent.⁹²

§ 116. —Discovery.

Although a bill to enjoin a boycott, is defective and subject to a motion to make more definite and certain, an application by defendants for examination of plaintiff before issue joined, as to whether plaintiff was a corporation, whether it had authority to engage in its present business, whether it was the owner and in possession of its plant, whether the plant was of great value, what was its output, the number of men employed when running at full capacity, whether plaintiff was at the time of commencing the action running with less than its full complement of hands or endeavoring to engage and employ workmen; should be denied because no information on these questions is necessary to enable defendants to answer,⁹³ and the same is the case with respect to inquiries as to what knowledge or information plaintiff had as to whether it was prevented by defendants' conspiracy from procuring men, as to whether defendants are members of unions, as to whether defendants unlawfully conspired and as to whether its business would be injured. All inquiries directed to what knowledge or information plaintiff had were obviously unnecessary to enable defendants to answer.⁹⁴

⁹⁰ American Steel & Wire Co. v Wire Workers' & Die Makers' Union, 90 Fed. 598.

⁹¹ 2 High on Injunctions, (4th ed.) Section 1577; Jacobs v Hall, 2 Ves. 458; Wood v Beadell, 3 Sim. 273.

⁹² A. R. Barnes & Co. v Berry, 156 Fed. 72.

⁹³ Badger Brass Mfg. Co. v Daly, 137 Wis. 601, 119 N. W. 328.

⁹⁴ Badger Brass Mfg. Co. v Daly, 137 Wis. 601, 119 N. W. 328.

§ 117. —Parties.

In the absence of statute either expressly or impliedly so providing, the members of a union cannot be sued in their common name to enjoin them from boycotting complainant,⁸⁵ although the objection that they are so sued may be waived and is waived unless such objection is taken at the proper time and in the proper manner.⁸⁶ The proper practice is to name as parties a few of the members or officers in a representative capacity, in behalf of themselves and all other members,⁸⁷ which is authorized by the rule which dispenses with the joinder of all the members of an unincorporated association who have a common interest and are too numerous to be made parties individually.⁸⁸ The bill must show that the individuals sued are sued in a representative capacity.⁸⁹ While a suit against unions and several persons individually not alleged to be members or officers of the unions is defective as a suit against the unions, the bill may be so amended as to cure the defect.¹ It is not necessary that the individuals named as representative of the union should be officers thereof. Leaders in the acts complained of may be made defendants as representative of the organization.² Where a statute expressly so provides, the suit may of course be brought against the union in its common name,³ and where statutes provide for the bringing of suits against voluntary unincorporated associations in the names of designated officers, a suit to enjoin

⁸⁵ *Karges Furniture Co. v Amalgamated Woodworkers' Union*, 165 Ind. 421, 75 N. E. 877, 2 L. R. A. N. S. 788; *American Steel & Wire Co. v Wire Drawers' & Die Makers' Union*, 90 Fed. 598. And see *Infra* Chapter XVII, *How Actions Brought By and Against Labor Unions*, Section 214.

⁸⁶ *A. R. Barnes & Co. v Chicago Typographical Union*, 232 Ill. 402, 83 N. E. 932, 122 Am. St. Rep. 129, 14 L. R. A. N. S. 1150; *Flannery v People*, 225 Ill. 62, 80 N. E. 60; *Iron Moulders' Union v Allis-Chalmers Co.*, 166 Fed. 45, 20 L. R. A. N. S. 315. And see *Infra* Chapter XVII, *How Actions Brought By and Against Labor Unions*, Section 214.

⁸⁷ *Reynolds v Davis*, 198 Mass. 294,

84 N. E. 457, 17 L. R. A. N. S. 162; *American Steel & Wire Co. v Wire Drawers' & Die Makers' Union*, 90 Fed. 598; *Rocky Mountain Bell Telephone Co. v Montana Federation of Labor*, 156 Fed. 810.

⁸⁸ *Reynolds v Davis*, 198 Mass. 294, 84 N. E. 457, 17 L. R. A. N. S. 162.

⁸⁹ *Reynolds v Davis*, 198 Mass. 294, 84 N. E. 457, 17 L. R. A. N. S. 162.

¹ *American Steel & Wire Co. v Wire Drawers' & Die Makers' Union*, 90 Fed. 598.

² *American Steel & Wire Co. v Wire Drawers' & Die Makers' Union*, 90 Fed. 598.

³ *United States Heater Co. v Iron Moulders' Union*, 129 Mich. 354, 88 N. W. 889.

members of a union from boycotting complainant may be brought against them, by making such officers defendants.⁴

§ 118. — **Preliminary injunctions.** — — **Their nature and purpose.**

The office of a preliminary injunction is to preserve the *status quo* until, upon final hearing, the court may grant full relief.⁵ It should not usurp the place of a final decree, nor should it reach out any further than is absolutely necessary to protect the rights and property of the petitioner from injuries which are not irreparable, but which must be expected before the suit can be heard on its merits.⁶ Preliminary injunctions are either prohibitory or mandatory. Generally the maintenance of the *status quo* can be accomplished by an injunction prohibitory in form, but it sometimes happens that the *status quo* is a condition not of rest, but of action, and the condition of rest is exactly what will inflict the irreparable injury upon complainant, which complainant appeals to a court of equity to protect him from. In such a case courts of equity issue mandatory writs before the case is heard on its merits.⁷

§ 119. — — **Hearing and allowance in general.**

It is not necessary for complainant to present to the court on the application for the preliminary injunction the entire evidence by which he expects to sustain his cause of action,⁸ or that his rights be clearly established, or that the court find he is entitled to prevail on the final hearing. It is sufficient if it appears that there is a real and substantial question between the parties, proper to be investigated in a court of equity, and that in order to prevent irremediable injury to the complainant, before his claims can be investigated, it is necessary to prohibit any change in the conditions

⁴ *Master Horse-shoers' Protective Ass'n v Quinlivan*, 82 N. Y. Suppl. 288, 83 App. Div. 459; and see *Thomas Russell & Sons v Stampers', etc. Union*, 107 N. Y. Suppl. 303, 57 Misc. 96.

⁵ *Toledo, etc. R. Co. v Pennsylvania Co.*, 54 Fed. 730, 741, 19 L. R. A. 387, 5 Inters. Com. Rep. 522.

⁶ *Goldfield Consolidated Mines Co. v*

Goldfield Miners' Union, 159 Fed. 500, 511.

⁷ *Toledo, etc. R. Co. v Pennsylvania Co.* 54 Fed. 730, 741, 19 L. R. A. 387, 5 Inters. Com. Rep. 522. And see *Lane v Newdigate*, 10 Ves. 192; *Harvey v Smith*, 1 Kay & J. 389, 392; *Beadel v Perry*, L. R. 3 Eq. 465; *Whitecar v Michenor*, 37 N. J. Eq. 6.

⁸ *New York Central Iron Works v Brennan*, 105 N. Y. Suppl. 870.

and relations of the property and of the parties during the litigation.*

§ 120. — — Evidence.

Upon the hearing of an application for a preliminary injunction, the rules of evidence are applied less strictly than upon the final hearing of the cause, and consequently evidence that would not be competent in support of an application for a perpetual injunction may be admitted.¹⁰ For instance hearsay evidence is admissible.¹¹ The reason why the rules of evidence are applied less strictly on such application is that probability of right is sufficient to authorize a preliminary injunction.¹² In respect of particular evidence offered, it has been held in a suit to enjoin a boycott against a newspaper that a statement by an agent of complainant that a patron told him that he withdrew his advertisement from complainant's paper because he had been threatened by a committee of defendants' union with loss of business is admissible as part of the *res gestae* to show the state of mind of the persons in doing the act which their declarations accompanied.¹³ And on an application to enjoin the use of such means as force and violence, to prevent persons in the employ of a carrier from working and others from entering its employ, a preliminary injunction is authorized, where the proclamation of the governor of the state, and of the mayor of the city, where the wrongful acts are alleged to be committed, and statements in the newspapers, supported by the testimony and affidavits filed in the cause, show that defendants have purposely arrested the flow of commerce, and have forcibly stopped the transportation of goods and merchandise from the government warehouses to the landings.¹⁴

* Goldfield Consolidated Mines Co. v Goldfield Miners' Union, 159 Fed. 500; *Injunctions* 22 Cyc. 822 and cases cited. And see High on Injunctions, Section 995.

¹⁰ My Maryland Lodge v Adt, 100 Md. 238, 59 Atl. 721, 68 L. R. A. 252; Casey v Cincinnati Typographical Union, 45 Fed. 135, 12 L. R. A. 193.

¹¹ Casey v Cincinnati Typographical

Union, 45 Fed. 135, 12 L. R. A. 193.

¹² Casey v Cincinnati Typographical Union, 45 Fed. 135, 12 L. R. A. 193. To the same effect see Buck v Heilmance, 1 Blatch 322; Matthews v Manufacturing Co., 19 Fed. 321.

¹³ Casey v Cincinnati Typographical Union, 45 Fed. 135, 12 L. R. A. 193.

¹⁴ United States v Workingmen's Amalgamated Council, 54 Fed. 994, 26 L. R. A. 158, 4 Inters. Com. Rep. 831.

§ 121. — —Grounds for denial.

A preliminary injunction will be refused when the complainant's right to the equitable relief sought is involved in doubt, and such injunction if allowed would contain the same relief that would ultimately be granted if the plaintiff succeeded upon the trial of the action,¹⁵ or where complainant shows no established business or the ownership of any appliance used in carrying on such business,¹⁶ or where there is an entire failure of proof in respect of the unlawful acts charged,¹⁷ or where the affidavits offered in support of the motion fail to disclose any act committed by any of the defendants in which complainants themselves have a common interest.¹⁸ But it is no ground for refusing an application that the affidavits are conflicting,¹⁹ or that defendants deny doing any of the acts complained of and disclaim any right or intention to do them. The rule that when all the equities of a complaint are denied in the answer, an injunction will not be granted *pendente lite*, only applies when the litigants claim adversely in respect to property, or the right to do some act in connection therewith and the asserted rights of complainant seem doubtful.²⁰ Especially is this true where it does not

¹⁵ Thomas Russell & Sons v Stampers', etc. Union, 107 N. Y. Suppl. 303, 57 Misc. 96; Butterick Publishing Co. v Typographical Union No. 6, 100 N. Y. Suppl. 292, 50 Misc. 1; Krebs v Rosenstein, 56 N. Y. App. Div. 619, 67 N. Y. Suppl. 385; Cohen v United Garment Workers of America, 72 N. Y. Suppl. 341, 35 Misc. 748; see also Hart v Mayor, etc., 9 Wend. (N. Y.) 571.

¹⁶ Van Der Platt v Undertakers' & Liverymen's Ass'n, (N. J.) 62 Atl. 453.

¹⁷ Sinsheimer v United Garment Workers, 77 Hun. 215, 28 N. Y. Suppl. 321.

¹⁸ Sweeney v Torrance, 11 Pa. Co. Ct. 497.

¹⁹ See Carter v Fortney, 172 Fed. 722.

²⁰ Foster v Retail Clerks' International Protective Ass'n, 78 N. Y. Suppl. 860, 39 Misc. 48; Davis v Zim-

merman, 91 Hun. 494, 36 N. Y. Suppl. 306; Herzog v Fitzgerald, 77 N. Y. Suppl. 366, 74 App. Div. 110. See also as sustaining this view George Jonas Glass Co. v Glassblowers' Ass'n, 64 N. J. Eq. 640, 54 Atl. 565, and *Infra*, Section 124. But compare United States v Workingmen's Amalgamated Council, 54 Fed. 994, 26 L. R. A. 158, 4 Inters. Com. Rép. 831, which does not recognize this exception, but holds that because of Equity rule 41, and of the fact that complainant in compliance therewith waived answer under oath, a temporary injunction would not be denied because the answer denied all the equities of the bill, and that such answer could be used at the hearing only with the probative force of an affidavit; and Barr v Essex Trades' Council, 53 N. J. Eq. 101, 30 Atl. 881, which seems to be in conflict with the rule stated in the text.

appear that the issuing of the injunction until final hearing would result in any hardship to the defendants.²¹ So the fact that complainants are members of an association, the purpose and effect of which is to fix a uniform price for building materials and destroy competition as between themselves does not take away their right to injunctive relief where there is absolutely no connection between the fixing of prices by such association and the acts sought to be enjoined.²² The want of equity that will bar a right to equitable relief for coming into court with unclean hands must be so directly connected with the matter in litigation that it has affected the equitable relations of the parties arising out of the transaction in question.²³ Nor is it a ground to deny an injunction against the use of violence and intimidation to prevent men from working for complainant that defendant union passed resolutions not made public, counseling and directing that there should be no violence, where absolutely nothing was done to disown the acts of violence committed or to give notice to the workmen thus deterred from working that the union repudiated such acts.²⁴

§ 122. — —Bond.

The court may impose such terms as seem proper as a condition to the granting of a preliminary injunction or as a condition to its refusal, as for instance, the giving of a bond.²⁵ A bond required as a condition to the allowance of a restraining order is not invalid

²¹ *George Jonas Glass Co. v Glass Blowers' Ass'n*, 64 N. J. Eq. 640, 54 Atl. 565.

²² *Patterson v Building Trade Council*, 11 Pa. Dist. 500, 11 Kulp 55. See also *Coeur D'Alene Consolidated & Min. Co. v Miners' Union of Wardner*, 51 Fed. 260, 19 L. R. A. 382, holding that the fact that the complainant is a member of an association which is charged to be illegal furnishes no ground for refusing to entertain a suit for injunction, when the suit is instituted in its own name and in its own interest, and the suit is not shown to be the direct result and a part of such illegal association; *American Steel & Wire Co. v American*

Steel & Wire Drawers', etc. Union, 90 Fed. 108, where it was held that the defense could not be made on the application for a preliminary injunction that complainant was a trust and therefore illegal; that such question could not be raised in a collateral proceeding. In this case the alleged illegality of complainant had no connection with the acts sought to be enjoined.

²³ *Patterson v Building Trades' Council*, 11 Pa. Dist. Rep. 500, 11 Kulp 15.

²⁴ *Southern R. Co. v Railway Machinists' Local Union*, 111 Fed. 49.

²⁵ *Injunctions*, 22 Cyc. 960 and cases cited.

because it bears date prior to that on which the order was entered, the sureties having justified on the latter date, and the bond having been filed after the entry of the order.²⁶

§ 123. — —Dissolution before final hearing in general.

Where the evidence on motion to dissolve a preliminary injunction fails to make a case showing the commission of the acts charged and entitling complainant to relief by injunction, it should be dissolved.²⁷ So such injunction should be dissolved as to those defendants whom it is admitted are not in any way connected with the practices of which complaint is made.²⁸ And it is not a ground to refuse to dissolve the injunction, that *all* the defendants have not answered where the defendants on whom the gravamen of the bill rests have answered.²⁹ On the other hand it should not be dissolved before final hearing, where the material allegations of the bill are sustained by the affidavits,³⁰ or where the affidavits are conflicting,³¹ or where it is apparent that complainant in case his injunction is dissolved would be immediately entitled to the same remedy upon a new application,³² or where the affidavits charge defendants and others with acts of violence, and other unlawful conduct and defendants merely deny the acts of violence but do not deny that they were present during the commission of the acts.³³ And while it is true that one who invokes the jurisdiction of a court of equity must not by his pleadings or acts attempt to mislead either the court or his opponents, yet a preliminary injunction will not be dissolved before final hearing on allegations that complainant has, in bad faith alleged that it was compelled to close its plant because defendants interfered with the operation thereof, when at the time of such closing it stated that the purpose thereof was to secure an adjust-

²⁶ *Hammond Lumber Co. v Sailors' Union of the Pacific*, 149 Fed. 577, (affirmed in 156 Fed. 450).

²⁷ *Everett-Waddey Co. v Richmond Typographical Union*, 105 Va. 188, 53 S. E. 273, 5 L. R. A. N. S. 792.

²⁸ *W. & A. Fletcher Co. v International Ass'n of Machinists*, (N. J.) 55 Atl. 1077.

²⁹ *August Gast Bank Note & Lithographing Co. v Fennimore Ass'n of*

St. Louis, 79 Mo. App. 612.

³⁰ *Wick China Co. v Brown*, 164 Pa. St. 449, 30 Atl. 261.

³¹ *W. P. Davis Machinery Co. v Robinson*, 84 N. Y. Suppl. 837, 41 Misc. 329; *Martin v McFall*, 65 N. J. Eq. 92, 55 Atl. 465.

³² *Injunctions* 22 Cyc. 978 and cases cited.

³³ *Gulf Bag Co. v Suttner*, 124 Fed. 467.

ment of freight rate, it not being shown that the two causes combined may have induced complainant to close its plant.³⁴

§ 124. — — Denial of acts charged, or of a right or intent to commit them as ground to dissolve before final hearing.

The weight of authority is to the effect that where a restraining order or preliminary injunction has been allowed restraining defendants from carrying on a boycott, such order or injunction will not be dissolved on a denial by defendants that they committed the acts charged, and a disclaimer of any right or intent to commit them, but will be continued during the pendency of the proceedings and until the final hearing.³⁵ This, it has been held, is so though the answer and *ex parte* affidavits denying all the charges of the bill and disclaiming any right or intention to do the acts charged are sustained by the greater weight of the evidence.³⁶ It is said that the continuance of the injunction can do defendants no harm if they have no intention of doing the acts complained of.³⁷ And as a further reason it is urged that the rule that where all the material averments in the bill are met by a full and explicit denial in the answer, a preliminary injunction will be dissolved, has no application where defendants do not assert any right to do the acts complained of; that such rule applies where the litigants claim adversely in respect of property, or the right to do some act in connection therewith.³⁸

³⁴ *Coeur D'Alene Consolidated Min. Co. v Miners' Union of Wardner*, 51 Fed. 260, 19 L. R. A. 382.

³⁵ *My Maryland Lodge v Adt*, 100 Md. 238, 59 Atl. 721, 68 L. R. A. 752; *Martin v McFall*, 65 N. J. Eq. 92, 55 Atl. 495; *Jersey City Printing Co. v Cassidy*, 63 N. J. Eq. 759, 53 Atl. 230; *W. P. Davis Machinery Co. v Robinson*, 84 N. Y. Suppl. 837, 41 Misc. 329; *Davis v Zimmerman*, 91 Hun. 489, 36 N. Y. Suppl. 837. See also *Foster v Retail Clerks' International Protective Ass'n*, 78 N. Y. Suppl. 860, 39 Misc. 48; *Morris Run Coal Min. Co. v Guy*, 14 Pa. Dist. Rep. 600. *Contra Searle Mfg. Co. v Terry*, 106 N. Y. Suppl. 437, 56 Misc. 265, in which the contrary view was main-

tained. It was said that the difficulty with the position that defendants cannot be harmed by such procedure is that the granting of the injunction in a measure assumes that they have taken some action injurious to plaintiff or are about to do so; that this, of necessity, injures defendants and is an imputation that the court should not put upon defendants unless it fairly appears that such action is necessary.

³⁶ *Jersey City Printing Co. v Cassidy*, 63 N. J. Eq. 759, 53 Atl. 230.

³⁷ *My Maryland Lodge v Adt*, 100 Md. 238, 59 Atl. 721, 68 L. R. A. 752; *Martin v McFall*, 65 N. J. Eq. 92, 55 Atl. 495.

³⁸ *Davis v Zimmerman*, 91 Hun. 486,

§ 125. — —Operation and effect of dissolution before final hearing.

An order dissolving a temporary injunction pending action for a permanent injunction is not a final determination of the rights of the parties.³⁹ It is proper to continue the case on the docket with the right to complainant to move for further preliminary injunctions, and reserving to them the right to such relief as they may show themselves entitled to on final hearing.⁴⁰ The dissolution of a preliminary injunction on motion therefor, should not influence the court on the final hearing but the relief granted should be in accordance with the rights as they then appear.⁴¹

§ 126. —Final hearing and permanent injunction.

On final hearing it is the right of defendants to insist upon proof of every material allegation of the complaint controverted by the answer, a right which is in no way affected by the fact that complainant's failure to establish his case fully was the result of an intimation of the judge that the evidence offered by him was insufficient.⁴² If the allegations of the bill are sustained by the proofs, a preliminary injunction granted in accordance therewith should be made permanent.⁴³ As to all not shown to have been implicated in the boycott,⁴⁴ or who have abandoned the combination and gone back to work for their employer,⁴⁵ the bill should be dismissed. If the injunction is too broad—if it prohibits acts which are lawful as well as acts which are unlawful it should be modified *pro tanto*.⁴⁶ In awarding an injunction, only such acts as are unlawful should be enjoined. Men are not to be denied the right to pursue a legiti-

36 N. Y. Suppl. 303; *W. P. Davis Machinery Co. v Robinson*, 84 N. Y. Suppl. 837, 41 Misc. 329; see also *Morris Run Coal Mining Co. v Guy*, 14 Pa. Dist. 600.

³⁹ *Slingerland v Albany Typographical Union*, 100 N. Y. Suppl. 569, 115 N. Y. App. Div. 15.

⁴⁰ *Everett-Waddey Co. v Richmond Typhographical Union*, 105 Va. 188, 53 S. E. 273, 5 L. R. A. N. S. 792.

⁴¹ *Injunctions* 22 Cyc. 965, 966 and cases cited.

⁴² *Crescent Feather Co. v United Upholsterers' Union Local No. 28*, (Cal.) 95 Pac. 871.

⁴³ *Wick China Co. v Brown*, 164 Pa. St. 449, 30 Atl. 261.

⁴⁴ *My Maryland Lodge v Adt*, 100 Md. 238, 59 Atl. 721, 68 L. R. A. 502; *Standard Tube Co. v International Union*, 9 Ohio Dec. 692.

⁴⁵ *Brown Mfg. Co. v Local Union No. 76*, 12 Ohio Dec. 753.

⁴⁶ *Mills v United States Printing Co.*, 91 N. Y. Suppl. 185, 99 App. Div. 605; *Sun Printing & Publishing Co. v Delaney*, 62 N. Y. Suppl. 750. And see *Gray v Building Trades' Council*, 91 Minn. 171, 97 N. W. 631, 103 Am. St. Rep. 497, 63 L. R. A. 753.

mate end in a legitimate way, simply because they may have overstepped the mark and trespassed upon the rights of their adversary. A barrier at the line, with punishment and damages for having crossed, is all that the adversary is entitled to ask. For instance if members of a union are engaged in a justifiable strike but use violence and intimidation to prevent others from working for the party against whom the strike has been declared, the injunction should prohibit these acts, but it is erroneous to prohibit in addition thereto, such lawful acts as peaceful persuasion and picketing to induce other workmen not to work for such party.⁴⁸ So an injunction is erroneous which prohibits defendants from the mere expression of an opinion at any time and place as to plaintiff and his business which at the worst would consist only of slander and which prohibits them from doing other things which do not appear to be connected with or incidental to the main acts and threatened acts.⁴⁹

§ 127. —**Certainty required in decree or order.**

The decree or order awarding the injunction should be so clear and certain in its terms that defendants may readily know what acts they are prohibited from doing.⁵⁰ As the defendant is bound to obey the process of the court at his peril, the language of the injunction should in all cases be so clear and explicit that an unlearned man can understand its meaning without the necessity of employing counsel to advise him what he has a right to do to save him from subjecting himself to punishment for a breach of the injunction.⁵⁰ This is a well settled rule of practice in injunction suits and it would be difficult to conceive of a class of cases where the reason for its strict application would be stronger than in injunction suits arising out of labor disputes. Those bound by the injunction are entitled to know what they may do without render-

⁴⁸ *Iron Moulders' Union v Allis-Chalmers Co.*, 166 Fed. 45, 20 L. R. A. N. S. 315.

⁴⁹ *Goldberg, Bowen & Co. v Stablemen's Union*, 149 Cal. 429, 86 Pac. 806, 117 Am. St. Rep. 145, 8 L. R. A. N. S. 460.

⁵⁰ *Injunctions*, 22 Cyc. 958 and cases cited; *Swift & Co. v United States*,

196 U. S. 375, 25 Sup. Ct. 276, 49 L. ed. 518; *Iron Moulders' Union v Allis-Chalmers Co.*, 166 Fed. 45, 20 L. R. A. N. S. 315; *Arthur v Oakes*, 63 Fed. 310, 327, 11 C. C. A. 209, 25 L. R. A. 414, 4 Inters. Com. Rep. 744. See also *Equity* 16 Cyc. 477, 478 and cases cited.

⁵⁰ *Laurie v Laurie*, 9 Paige N. Y. 234.

ing themselves liable to punishment for contempt, and should not through the indefiniteness of the decree or order be prevented, through fear of an infraction of its terms, from doing acts which they have a clear legal right to do. It was held, however, in a recent decision in a boycott case that the language of the injunction is to be interpreted in the light of the allegations and prayer of the bill, which may make an otherwise indefinite order sufficiently specific; that "It is the acts set forth in the bill that are enjoined."⁵¹ But this doctrine is against the great weight of authority, and without any foundation in reason, and its application liable to inflict great injustice and hardship on those bound by the injunction. Even if it be conceded that an indefinite and defective order can be rendered specific by interpreting it in the light of the bill, which in the majority of instances in labor disputes seeks to enjoin acts which are lawful as well as those which are unlawful, there is certainly no obligation on the part of the defendants to make an examination of the pleadings for information as to their rights and obligations which information the court, through its order, is on the commonest principles of justice bound to give. In a recent decision the following decree was held sufficiently specific. It enjoined defendants "from stationing themselves in the doorway of said restaurant or upon the sidewalk in front of the same and there interfering with the business of plaintiff by intimidation, insults, or threats to his patrons, thereby inducing persons not to patronize the restaurant of said plaintiff; and said defendants, * * * are hereby especially enjoined from in any manner interfering with the said business of plaintiff by means of threats or intimidation of any kind or nature, directed against the patrons or customers * * * of said plaintiff and from interfering by means of threats or intimidation with any person that may be working for plaintiff, or may desire to work for him in his said restaurant."⁵²

§ 128. —Review.

Orders granting,⁵³ continuing,⁵⁴ dissolving,⁵⁵ or denying a motion

⁵¹ *Sailors' Union of the Pacific v Hammond Lumber Co.*, 156 Fed. 450.

⁵² *Jordahl v Hayda*, 1 Cal. App. 696, 82 Pac. 1079.

⁵³ See *Sinsheimer v United Garment*

Workers, 77 Hun. 215, 28 N. Y. Suppl. 331; *Blindell v Hagen*, 56 Fed. 696.

⁵⁴ See *Davis v Zimmerman*, 91 Hun. 489, 36 N. Y. Suppl. 303.

⁵⁵ See *Davitt v American Bakers' Union*, 124 Cal. 99, 59 Pac. 775.

to continue,⁵⁶ a temporary injunction are appealable. The granting of a temporary injunction, after issue joined and upon the pleadings and affidavits of both parties, is, for the purpose of reviewing the action of the court, deemed to be, in effect, a finding that the allegations of the complaint upon which the writ is prayed for are true; and upon appeal from the order granting the writ, the appellate court will review the affidavits only to the extent of determining whether they fairly tend to support the allegations of the complaint.⁵⁷ If a temporary injunction has been improperly dissolved the reviewing court will reinstate it on appeal from the order dissolving it.⁵⁸ And when an order allowing a temporary injunction,⁵⁹ or a final decree awarding a permanent injunction,⁶⁰ prohibits acts which are lawful as well as those which are unlawful, it will be modified by striking out so much as prohibits acts which the defendants may lawfully commit, and which are not subject to equitable control. It has been so held in respect of an order enjoining defendants, officers of a union from notifying their members to cease working on premises where complainant with whom the union had a trade dispute, was engaged in doing work as a contractor;⁶¹ of an order prohibiting defendants from notifying plaintiff's customers that he was "unfair" there being no showing that such notification portended injury, or was intended as a threat or intimidation;⁶² and of an order prohibiting workmen engaged in a lawful strike from peaceable persuasion and picketing to induce others not to work for the party against whom the strike is in operation.⁶³ So an order prohibiting defendants from "requesting" or "preventing", etc., was modified on appeal by adding after each of

⁵⁶ *Master Horse-shoers' Protective Ass'n v Quinlan*, 82 N. Y. Suppl. 288, 83 App. Div. 459.

⁵⁷ *Gray v Building Trades' Council*, 91 Minn. 171, 97 N. W. 663, 103 Am. St. Rep. 497, 63 L. R. A. 753.

⁵⁸ *Wick China Co. v Brown*, 164 Pa. St. 499, 30 Atl. 261.

⁵⁹ *Gray v Building Trades' Council*, 91 Minn. 171, 97 N. W. 663, 103 Am. St. Rep. 497, 63 L. R. A. 753.

⁶⁰ *Mills v United States Printing Co.*, 91 N. Y. Suppl. 185, 99 App. Div. 605; *Iron Moulders' Union v*

Allis-Chalmers Co., 166 Fed. 45, 20 L. R. A. N. S. 315. And see *Goldberg & Co. v Stablemen's Union*, 149 Cal. 429, 86 Pac. 806, 117 Am. St. Rep. 145, 8 L. R. A. N. S. 460.

⁶¹ *Gray v Building Trades' Council*, 91 Minn. 171, 97 N. W. 663, 103 Am. St. Rep. 497, 63 L. R. A. 753.

⁶² *Gray v Building Trades' Council*, 91 Minn. 171, 97 N. W. 663, 103 Am. St. Rep. 497, 63 L. R. A. 753.

⁶³ *Iron Moulders' Union v Allis-Chalmers Co.*, 166 Fed. 45, 20 L. R. A. N. S. 315.

these words, the words "in such manner as to express or imply a threat, intimidation, coercion or force."⁶⁴ On the other hand if the final decree does not give the complainants all the relief to which they are entitled and permits acts which are unlawful the reviewing court will so modify it as to award such relief.⁶⁵ Accordingly a decree enjoining defendants from interference by threats and intimidation to prevent employes, workmen under contract with complainant from working for him, will be modified so as to include workmen who are not under contract with him, it being immaterial whether they are under contract or not.⁶⁶ And a decree awarding a permanent injunction will be reversed, where complainant's evidence does not establish his case, and it is immaterial that his failure to produce sufficient evidence is the result of the trial judge's error in intimating that the evidence already introduced was sufficient.⁶⁷

§ 129. Criminal prosecution.—Indictment.⁶⁸

In criminal prosecutions arising out of boycotts, the general rules for drawing indictments in prosecutions for conspiracy govern. It is well settled that if the object of a combination is unlawful, the means by which its accomplishment is to be effected are immaterial and need not be alleged.⁶⁹ Hence if the indictment charges a malicious intent to injure or ruin one's business, the particular means need not be alleged.⁷⁰ If however the indictment does supplement the charge of unlawful conspiracy by alleging the means used, *to-wit*, threats and intimidation to drive his workmen out of his employ which is made an offense by statute, it is not necessary to set out specifically the kind of threats, or methods of intimidation made use of. The words of the statute may be used without setting

⁶⁴ *Sun Printing & Publishing Co. v Delaney*, 62 N. Y. Suppl. 750.

⁶⁵ *Vegelahn v Guntner*, 157 Mass. 92, 44 N. E. 1077, 57 Am. St. Rep. 443, 55 L. R. A. 72; *Beck v Railway Teamsters' Protective Union*, 118 Mich. 497, 77 N. W. 13, 74 Am. St. Rep. 421, 42 L. R. A. 407. See also *Reynolds v Davis*, 198 Mass. 294, 84 N. E. 457, 17 L. R. A. N. S. 162.

⁶⁶ *Vegelahn v Guntner*, 157 Mass. 92, 44 N. E. 1077, 57 Am. St. Rep. 443, 55 L. R. A. 72.

⁶⁷ *Crescent Feather Co. v United Upholsterers' Union*, 153 Cal. 433, 95 Pac. 871.

⁶⁸ For forms of indictment for boycotting, see *Infra Appendix* forms Nos. 7, 8, 9.

⁶⁹ *Conspiracy* 8 Cyc. 667 and cases cited.

⁷⁰ *State v Stewart*, 59 Vt. 273, 9 Atl. 559, 49 Am. Rep. 710; *Crump v Com.*, 84 Va. 927, 6 S. E. 2, 10 Am. St. Rep. 895.

forth their meaning."⁷¹ Nor is it necessary to allege that he desired or intended to employ such workmen, since an allegation that he was prevented from employing them imports a purpose to do so. And an allegation that defendants conspired to prevent such employment imports an intent to interfere with the execution of a purpose already resolved upon.⁷² Knowledge of the wrongful character of the acts charged, need not be alleged. If an act in its natural characteristics, and quality is unlawful, knowledge of its unlawful character is presumed.⁷³ So in the absence of statute so providing it is not necessary to charge any overt act, though such act may be charged by way of aggravation.⁷⁴

§ 130. —Evidence.

On a prosecution for a conspiracy to ruin one's business by coercing his customers to withhold their patronage from him, the declaration of one of the conspirators although not a defendant, made during the continuance of the conspiracy for the purpose of carrying it into effect, and relating to the way and manner by which the conspirators intended to accomplish their objects is admissible.⁷⁵⁻⁷⁶ So also evidence of the acts of the defendants and their agents in endeavoring to accomplish the purpose of the conspiracy, is admissible for the purpose of showing the manner in which it was designed to be accomplished.⁷⁷ If the defendants were previously engaged in another boycott, and proclaimed their purpose to pursue the same general policy as in the former boycott including a demand that expenses be paid, a proposed agreement submitted by defendants to the company subjected to the first boycott during its progress, is admissible to show what was done in that case, so that the jury may understand what was meant by the threat to "pursue the same policy."⁷⁸ Where one of the conspirators, not a defendant declined to testify on the ground that his testimony would tend to incriminate himself, it is permissible to show that in another case involving the same transactions he testified that he printed

⁷¹ *State v Stewart*, 59 Vt. 273, 9 Atl. 559, 59 Am. Rep. 710. cited.

⁷⁵⁻⁷⁶ *State v Glidden*, 55 Conn. 46, 8 Atl. 890, 3 Am. St. Rep. 23.

⁷² *State v Stewart*, 59 Vt. 273, 9 Atl. 559, 59 Am. Rep. 710. ⁷⁷ *State v Glidden*, 55 Conn. 46, 8 Atl. 890, 3 Am. St. Rep. 23.

⁷³ *State v Stewart*, 59 Vt. 273, 9 Atl. 559, 59 Am. Rep. 710. ⁷⁸ *State v Glidden*, 55 Conn. 46, 8 Atl. 890, 3 Am. St. Rep. 23.

⁷⁴ *Conspiracy* 8 Cyc. 669 and cases

some circulars used by defendants in furtherance of the boycott.⁷⁹ In respect of the effect of the boycott, where the state has introduced evidence to show that defendants had attempted by threats to prevent customers from patronizing the prosecutors, their employes familiar with their business may testify as to the number of customers lost by them respectively.⁸⁰ Where on a prosecution for boycotting by preventing workmen from working for the persons boycotted, an officer of the union testifies that the union instructed pickets to use no violence, it is proper to show the action of the union when informed that violence had been used by their men, and for that purpose to show that the union had paid counsel to defend union men arrested for violence.⁸¹ And where one of the defendants testified as to instructions given to union men to use no violence and that he had no knowledge of any one interfering with a person named except as he had read of it, he may for the purpose of contradicting him, be asked, in connection with the offer of the record showing his conviction of assaulting such person, whether he had been convicted of using violence during the strike.⁸² On such prosecution, a member who attended two meetings and heard what defendant there said, but who participated in no act for the commission of which defendant was convicted is not an accomplice within a statute prohibiting conviction upon the uncorroborated testimony of an accomplice.⁸³

⁷⁹ State v Glidden, 55 Conn. 46, 8 Atl. 890, 3 Am. St. Rep. 23.

⁸⁰ State v Stockford, 77 Conn. 227, 58 Atl. 769, 107 Am. St. Rep. 28.

⁸¹ State v Stockford, 77 Conn. 227,

58 Atl. 769, 107 Am. St. Rep. 28.

⁸² State v Stockford, 77 Conn. 227, 58 Atl. 769, 107 Am. St. Rep. 28.

⁸³ People v Yannicola, 117 N. Y. Suppl. 381.

CHAPTER IX.

BOYCOTTS OF LABOR.

- § 131. Introductory statement.
- § 132. Rights invaded by boycott.
- § 133. Boycott by labor.—Boycott an unlawful conspiracy.
- § 134. Liability for damages.—In general.
- § 135. Measure of damages.
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- § 140. Indictment.
- § 141. Evidence.
- § 142. Liability to injunctive process.—In general.
- § 143. Against whom awarded.
- § 144. Boycotts by capital.

§ 131. Introductory statement.

It is not capital alone, whose rights have been invaded by the boycott, since the beginning of the marvelous growth of labor unions and their corresponding access of power: On the contrary the courts have been frequently called upon in recent years to give redress for or to check or punish, boycotts directed against labor. Labor as well as capital may be the subject of a boycott, and the boycott may be instituted either by capital or labor. On principle, the rules of law applicable to boycotts of labor should be and are identical with those governing boycotts of capital. Each is entitled to the same protection as is accorded the other.

§ 132. Rights invaded by boycott.

The common law has long recognized as a part of the boasted liberty of the citizen the right of every man to freely engage in such lawful business or occupation as he himself may choose, free from hindrance or obstruction by his fellowmen, saving such as may result from the exercise of equal or superior rights, on their part, such, for instance, as the right of fair competition in the like field of human effort, and saving, of course, such other hindrance or ob-

struction as may be legally excused or justified.⁸⁴ Labor, the means by which one supports himself, and those dependent upon him, is one of the most valuable and fundamental of rights. It is property in the highest sense of the word, and as such is entitled to the protection of the law.⁸⁵ Brain, muscle, power and will to work are the poor man's capital,⁸⁶ and the right to toil is as secure, and entitled to the same protection as the millions of the wealthy.⁸⁷ To deprive the laborer of this right is in violation of the constitutional provisions that no person shall be deprived of life, liberty or property without due process of law, and that no state shall deny to any person within its jurisdiction the equal protection of the laws.⁸⁸ The specific right invaded by a boycott of labor, as in the case of a boycott of capital,⁸⁹ is the right to enjoy a certain free and natural condition of the labor market,⁹⁰ the right to dispose of one's labor with freedom.⁹¹⁻⁹² The valuable thing to employer and employe alike is freedom on both sides of the market.⁹³ The peculiar element of

Cross References.

For form of indictment for preventing workman from working at his trade by means of a boycott, see *Appendix* form No. 9.

For form of declaration in action to recover damages for procuring plaintiff's discharge from employment and preventing him from obtaining employment by threats, persuasion, etc., see *Appendix* form No. 10.

⁸⁴ *Brennan v United States Hatters of North America*, 73 N. J. L. 729, 65 Atl. 165, 118 Am. St. Rep. 727, 9 L. R. A. N. S. 254.

⁸⁵ *Illinois*.—*Mathews v People*, 202 Ill. 389, 401, 67 N. E. 28, 95 Am. St. Rep. 241, 63 L. R. A. 73.

Minnesota.—*Gray v Building Trades' Council*, 91 Minn. 171, 97 N. W. 663, 103 Am. St. Rep. 477, 63 L. R. A. 750.

Missouri.—*Carter v Oster*, 134 Mo. App. 146, 112 S. W. 995.

Nevada.—*Ex parte Boyce*, 27 Nev. 229, 75 Pac. 1, 65 L. R. A. 47.

Pennsylvania.—*Purvis v United*

Brotherhood of Carpenters' & Joiners, 214 Pa. St. 344, 63 Atl. 585, 42 Am. St. Rep. 272, 12 L. R. A. N. S. 642; *Brace Bros. v Evans*, 5 Pa. Co. Ct. 163, 3 Rep. & Corp. L. J. 561.

Vermont.—*State v Stewart*, 59 Vt. 273, 9 Atl. 559, 59 Am. Rep. 710.

United States.—*Goldfield Consolidated Mines Co. v Goldfield Miners' Union*, 159 Fed. 500, 514.

⁸⁶ *Brace Bros. v Evans*, 5 Pa. Co. Ct. 163, 3 Rep. & Corp. L. J. 561.

⁸⁷ *Ex parte Boyce*, 27 Nev. 229, 75 Pac. 1, 65 L. R. A. 47, 53.

⁸⁸ *Mathews v People*, 202 Ill. 389, 401, 67 N. E. 28, 95, Am. St. Rep. 241, 63 L. R. A. 73.

⁸⁹ See *Supra* Chapter VIII, *Boycott of Capital, and Substantive Law Relative Thereto*, Section 86.

⁹⁰ *Jersey City Printing Co. v Cassidy*, 63 N. J. Eq. 259, 53 Atl. 233.

⁹¹⁻⁹² *Plant v Woods*, 176 Mass. 492, 57 N. E. 1011, 79 Am. St. Rep. 330, 51 L. R. A. 339.

⁹³ *Jersey City Printing Co. v Cassidy*, 63 N. J. Eq. 259, 53 Atl. 233.

this right is that it is an interest which one man has in the freedom of another."⁴

§ 133. **Boycott by labor.—Boycott an unlawful conspiracy.**

Before beginning a discussion of this subject, it will be well to state that combinations of workmen to strike against their employer to compel him to discharge other workmen in his employ or to refuse employment to other workmen seeking employment, is considered in the chapter relating to strikes. Whether or not this amounts to a boycott depends solely on the question whether there is just cause or excuse for the strike and there is an absolute lack of harmony in respect of what constitutes just cause or excuse.⁵⁵⁻⁵⁶ It is very generally held an unlawful conspiracy for members of a union to enter into a combination to procure the discharge of an employe from employment,⁵⁷ or to prevent his employment by all who might employ him,⁵⁸ by intimidation directed against such employer or possible employers such as threats to impose or the imposition of fines on those giving him employment,⁵⁹ or threats to prevent their obtaining the labor necessary to the carrying on of their business,¹ or threats that independent contractors doing work for them will be coerced to cease doing so, by means of strikes, or threats of strikes against them by the members of the combination,² or that the combination will coerce customers or the general public into withholding their patronage from such employer or possible employers by threats that the combination will in turn cause injury

⁴⁴ *Jersey City Printing Co. v Cassidy*, 63 N. J. Eq. 259, 53 Atl. 233. And see *Atkins v W. & A. Fletcher Co.*, 65 N. J. Eq. 658, 55 Atl. 1074, in which it was said: "Each party to a contract for the sale of labor has an interest in the freedom of the other party with respect to making the contract.

⁵⁵⁻⁵⁶ See *Supra* Chapter IV, *Strikes*, Sections 35 to 43 inclusive.

⁵⁷ *Wyman v Deady*, 79 Conn. 414, 65 Atl. 129; *Perkins v Pendleton*, 90 Me. 166, 38 Atl. 96, 60 Am. St. Rep. 252; *Carter v Oster*, 134 Mo. App. 146, 112 S. W. 995; *Lucke v Clothing*

Cutters' and Trimmers' Assembly, 77 Md. 896, 26 Atl. 505, 34 Am. St. Rep. 421, 19 L. R. A. 421.

⁵⁸ *Callan v Wilson*, 127 U. S. 540, 8 Sup. Ct. 1301, 32 L. ed. 223; *People v McFarlin*, 89 N. Y. Suppl. 527, 43 Misc. 591; *Carter v Oster*, 134 Mo. App. 146, 112 S. W. 995.

⁵⁹ *Carter v Oster*, 134 Mo. App. 146, 112 S. W. 995.

¹ *State v Dyer*, 67 Vt. 690, 32 Atl. 814.

² *Pickett v Walsh*, 192 Mass. 572, 78 N. E. 753, 46 Am. Rep. 272, 6 L. R. A. N. S. 1067.

to their business, if its demands are not complied with.³ And, *a fortiori*, it would be an unlawful conspiracy for members of a union to combine to prevent an employer, by use of force and violence, from hiring workmen not members of their organization.⁴ Combinations of the character described are not authorized by a statute authorizing the formation of labor unions "to promote the well being of their every day life, and for mutual assistance in securing the most favorable conditions for the labor of their members."⁵ Organized labor should not become an instrument of wrong and injustice to those who in the same walk of life, and sometimes under less favored circumstances are striving to provide the means by which they can maintain themselves and their families.⁶

§ 134. —Liability for damages.— —In general.

The execution of a conspiracy to cause an employe's discharge from employment by means enumerated in the preceding section, gives a right of action for the damages which naturally result therefrom.⁷ Unlike criminal prosecutions, in which the conspiracy itself, without any overt acts in furtherance thereof furnishes grounds for indictment unless otherwise provided by statute, the gist of the action for damages is not the conspiracy but the injury to the plaintiff resulting from its execution, and without which no action for damages is possible.⁸ Nevertheless the conspiracy may be shown in aggravation of damages, and to enable plaintiff to recover against all the tort-feasors.⁹ To give a right of action to one whose discharge from employment has been caused by unlawful means, it is not essential that the contract of hiring should have

³State v Glidden 55 Conn. 46, 8 Atl. 890, 3 Am. St. Rep. 23; Lucke v Clothing Cutters' and Trimmers' Assembly, 77 Md. 396, 26 Atl. 505, 34 Am. St. Rep. 421, 19 L. R. A. 408; People v McFarlin, 89 N. Y. Suppl. 527, 43 Misc. 591. See also Plant v Woods, 176 Mass. 492, 57 N. E. 1011, 79 Am. St. Rep. 330, 51 L. R. A. 339.

⁴See Branson v Industrial Workers of the World, (Nev.) 95 Pac. 354.

⁵Lucke v Clothing Cutters' and Trimmers' Assembly, 77 Md. 396, 26 Atl. 505, 39 Am. St. Rep. 421, 19 L. R. A. 408.

⁶Lucke v Clothing Cutters' and Trimmers' Assembly, 77 Md. 396, 26 Atl. 505, 39 Am. St. Rep. 421, 19 L. R. A. 408.

⁷Wyeman v Deady, 79 Conn. 414 65 Atl. 129; Perkins v Pendleton, 90 Me. 166, 38 Atl. 96, 60 Am. St. Rep. 252; Carter v Oster, 134 Mo. App. 146, 112 S. W. 995; Swaine v Blackmore, 75 Mo. App. 74.

⁸Wyeman v Deady, 79 Conn. 414, 65 Atl. 129.

⁹Wyeman v Deady, 79 Conn. 414, 65 Atl. 129; and see *Conspiracy* 8 Cyc. 674 and cases cited.

been for a definite period. The fact that the contract is terminable at will only affects the amount that he is to recover as damages.¹⁰ If his discharge was procured by the defendants by illegal methods when otherwise he would have been retained by his employers, his cause of action is complete; this being one phase of the general doctrine that third parties are liable for inducing breaches of contracts by unlawful methods.¹¹ Nor is the right to recover, in any way affected by the fact, that the discharge from employment, gives no right of action against the employer to the discharged employee.¹² And to entitle him to recover, malice, in the sense of personal ill will towards him is not essential. If the act causing the discharge be without just cause or excuse, it is equally to be condemned and just as much in violation of a legal right.¹³

§ 135. — — Measure of damages.

The damages recoverable are as a general rule confined to what the discharged employe would have earned if at work,¹⁴ but where the conduct of defendants is not only without just cause or excuse but is also wilful, malicious and oppressive, additional damages may be awarded for mental suffering.¹⁵

§ 136. — — Persons liable.

All the members of the combination, are liable for all the overt acts illegally done pursuant to the general scheme agreed on by

¹⁰ *Lucke v Clothing Cutters' and Trimmers' Assembly*, 77 Md. 396, 26 Atl. 505, 39 Am. St. Rep. 421, 19 L. R. A. 421; *Perkins v Pendleton*, 90 Me. 166, 38 Atl. 96, 60 Am. St. Rep. 252; *Carter v Oster*, 134 Mo. App. 146, 112 S. W. 995. See also *Berry v Donovan*, 188 Mass. 354, 73 N. E. 603, 108 Am. St. Rep. 499, 5 L. R. A. N. S. 899; *Moran v Dunphy*, 177 Mass. 485, 59 N. E. 125, 83 Am. St. Rep. 289, 52 L. R. A. 115; *Hey v Wilson*, 232 Ill. 389, 83 N. E. 928, 122 Am. St. Rep. 118, 16 L. R. A. N. S. 85; *London Guaranty & Accident Association v Horn*, 101 Ill. App. 355 (Aff'd in 206 Ill. 493, 69 N. E. 526, 99 Am. St. Rep. 185).

¹¹ *Carter v Oster*, 134 Mo. App. 146,

112 S. W. 995.

¹² *Lucke v Clothing Cutters' and Trimmers' Assembly*, 77 Md. 396, 26 Atl. 505, 39 Am. St. Rep. 421, 19 L. R. A. 421; *Chipley v Atkinson*, 23 Fla. 206, 1 So. 934, 11 Am. St. Rep. 367.

¹³ *Lucke v Clothing Cutters' and Trimmers' Assembly*, 77 Md. 396, 26 Atl. 505, 39 Am. St. Rep. 421, 19 L. R. A. 421; and see *Wyeman v Deady*, 79 Conn. 414, 65 Atl. 129.

¹⁴ *Carter v Oster*, 134 Mo. App. 146, 112 S. W. 995; 2 *Wood's Master & Servant* 246. And see *Infra* Chapter XXV, *Membership*, Section 332.

¹⁵ *Carter v Oster*, 134 Mo. App. 146, 112 S. W. 995. And see *Infra* Chapter XXV, *Membership*, Section 332.

the combination.¹⁶ Hence if a walking delegate of a union with the knowledge and approval and authority of the union, procures a workman's discharge by means of threats and intimidation directed against his employer, the union and its walking delegate are liable as joint tort-feasors.¹⁷

§. 137. — — Pleading and evidence.¹⁸

In an action for procuring the discharge of an employe by unlawful means, the gist of the action being the injury resulting to plaintiff, and not the conspiracy, the declaration or complaint must show acts committed in execution of the conspiracy resulting in injury to plaintiff and that such injury was the natural and proximate result of such acts.¹⁹ The allegation of conspiracy while not essential to the statement of the cause of action, may be regarded either as an averment of a fact, the proof of which might aid the plaintiff in establishing a joint liability of the defendants, or as an allegation of a fact in aggravation of the injury complained of.²⁰ An express averment of malice is unnecessary. The plaintiff is not bound to prove any other malice than that which the law will imply from the unlawful acts proved.²¹ To entitle one to a verdict against a union and its walking delegate for procuring his discharge from employment by threats and intimidation, no further proof of conspiracy is necessary than that they were joint tort-feasors in procuring his dismissal by means of threats and intimidation.²² If the declaration charges defendants with wrongfully procuring plaintiff's discharge in breach of a contract of employment for a definite time, there can be no recovery on proof that they wrongfully procured his discharge under a contract terminable at will.²³

¹⁶ See *Supra* Chapter VII, *Boycotts of Capital, and Substantive Law Relating Thereto*, Section 94.

¹⁷ *Wyeman v Deady*, 79 Conn. 414, 65 Atl. 129.

¹⁸ For form of declaration in action to recover damages for procuring plaintiff's discharge from employment and preventing him from obtaining employment by threats, persuasion, etc., see *Appendix* form No. 11.

¹⁹ See *Conspiracy* 8 Cyc. 675 and cases cited.

²⁰ *Wyeman v Deady*, 79 Conn. 414, 65 Atl. 129.

²¹ *Wyeman v Deady*, 79 Conn. 414, 65 Atl. 129.

²² *Wyeman v Deady*, 79 Conn. 414, 65 Atl. 129.

²³ *Lucke v Clothing Cutters' and Trimmers' Assembly*, 77 Md. 396, 26 Atl. 505, 19 L. R. A. 421, 39 Am. St. Rep. 421.

§ 138. — — Instructions and questions for jury.

Where a recovery for mental suffering is sought, because of the wilful and malicious acts of defendants, the court may properly instruct the jury on this element of damages where there is some evidence that defendants' acts were wilful and malicious, but the instruction should leave it to the jury to determine the quality of defendants' acts, and if it fails to do so a new trial should be granted.²⁴

§ 139. —Criminal prosecutions.— —Liability.

A combination between members of a union to procure the discharge of an employe from employment, or to procure such discharge and prevent his obtaining any employment at his trade, by threatening his employer or those who might otherwise give him employment, that the combination would prevent the employer or possible employers from obtaining or retaining workmen necessary to the carrying on of their business, or procure a withdrawal or withholding of patronage from them, is an indictable conspiracy. Thus in *State v Glidden*,²⁵ it was held that a combination by members of unions to compel an employer to discharge his employes and hire members of the unions in their stead, by threats that the union to which the members of the combination belong, and which comprise a large membership, will withdraw their patronage from him, and that the combination will by similar action coerce others to withhold their patronage from him, is an unwarranted interference with the rights of the workmen whose discharge they seek to coerce, and is an indictable conspiracy at common law, and under a statute making it an offense for any person to threaten or use any means to intimidate any person against his will to do or abstain from doing any act which such person has a legal right to do. In *State v Dyer*,²⁶ it was held that where members of a union acting in concert, procure the discharge of an employe from employment by threatening his employer, that unless he discharged such employe, they would prevent him from obtaining or retaining any workmen in his shops, and prevent the employes obtaining any other employment by making threats of a like nature to those who might otherwise have given employment,

²⁴ *Carter v Oster*, 134 Mo. App. 146, 112 S. W. 995.

St. Rep. 823. And see *Wyeman v Dedy*, 79 Conn. 414, 65 Atl. 129.

²⁵ 55 Conn. 46, 8 Atl. 890, 3 Am.

²⁶ 67 Vt. 690, 32 Atl. 8.

they are guilty of a criminal offense. In *Callan v Wilson*,²⁷ it was held that a combination by members of a lodge of a labor union extending throughout the United States to prevent other members of the lodge from obtaining employment in their calling anywhere because of an alleged infraction of labor union rules, to be carried out by refusing to work with them or for any one employing them that if they did not cease to, or refuse to employ them, those so warned would be deprived of any custom or patronage, as well from the persons so conspiring as from all members of the union whatsoever, is an indictable conspiracy. And in *People v McFarlin*,²⁸ it was held that a combination between members of a union, to cause a workman's discharge and prevent his obtaining employment at his trade, by utilizing the entire power and enginery of the association to turn custom away from and promote hostility toward any one who employed him, is a criminal conspiracy within a statute making it a misdemeanor for two or more persons to conspire to prevent another from exercising a lawful trade or calling, by force, threats or intimidation.

§140. — — Indictment.²⁹

An allegation in an information charging a conspiracy to prevent a workman "from obtaining work or employment or continuing in his said work or employment," with a designated company, is not bad as being in the alternative where it also alleges that he was in the employment of such company when the conspiracy was formed. "Obtaining" employment in its shops and "continuing" employment there are synonomous terms, the two words convey a conjunctive and not a disjunctive meaning.³⁰

§ 141. — — Evidence.

On a prosecution for conspiracy to procure an employe's discharge by intimidation of his employer and by the same means to prevent anyone else from employing him, and for the execution of such conspiracy, where the evidence tends to show that defendants had driven the prosecutor from the employment of the company he was working for, that he had been engaged to work for another

²⁷ 127 U. S. 540, 8 Sup. Ct. 1301, 32 L. ed. 223.

²⁸ 89 N. Y. Suppl. 527, 43 Misc. 591.

²⁹ For form of indictment for pre-

venting workman from working at his trade by means of a boycott, see *Appendix* form No. 29.

³⁰ *State v Dyer*, 67 Vt. 690, 32 Atl. 815.

employer, that such employer had cancelled the engagement because of representations made to him by defendants that there would be trouble if he did not, such employer may testify as to a conversation with defendants that followed, as to the reason why prosecutor had been forced into his then present position, since it tends to show that defendants were connected with the offense.³¹ So on such prosecution, testimony of the sheriff as to admissions made by one of the defendants while under arrest, are admissible to incriminate himself, though not against the other alleged conspirators because not made in the prosecution of the undertaking but after its completion.³²

§ 142. —Liability to injunctive process.— —In general.

Injunctions have sometimes been issued in the class of cases under consideration.³³ Thus it has been held that a combination by members of a union entered into for the purpose of compelling an employer of workmen who refused to join the union to discharge them, the means to be used being threats of a boycott, is an unlawful conspiracy, and that acts in furtherance thereof will be enjoined on a bill brought by the workmen whose rights are threatened.³⁴ It has similarly been held that where members of labor unions seek to secure all the work appertaining to their trade by strikes against a third person with whom they have no dispute, in order to force him to compel an employer for whom he does work as an independent contractor, to give the work appertaining to their trade to the exclusion of other workmen whose discharge they seek to enforce, they are guilty of an unjustifiable interference with the rights of such workmen and that on a bill brought by them acts in execution of the conspiracy will be enjoined. Organized labor's right of coercion and compulsion, it was said is limited to strikes against persons with whom the organization has a trade dispute.³⁵

§ 143. — — Against whom awarded.

As is elsewhere shown, according to well settled principles of the

³¹ State v Dyer, 67 Vt. 690, 32 Atl. 815.

³² State v Dyer, 67 Vt. 690, 32 Atl. 815.

³³ Swaine v Blackmore, 75 Mo. App. 74. And see cases cited in subsequent notes in this section.

³⁴ Plant v Woods, 176 Mass. 492, 57 N. E. 1011, 79 Am. St. Rep. 330, 51 L. R. A. N. S. 339.

³⁵ Pickett v Walsh, 192 Mass. 572, 78 N. E. 753, 46 Am. Rep. 272, 6 L. R. A. N. S. 1067.

law of conspiracy, if a combination is formed for an unlawful purpose, the act of one done to effect the common object is the act of all for which each is responsible, and the fact that some of the members of the combination did not engage in the commission of the acts complained of furnishes no reason for denying an injunction against them.³⁶ It is obvious, however, that an injunction should not be awarded against one who it appears was not a member of the combination and did not commit any of the acts complained of.³⁷

§ 144. Boycotts by capital.

As shown in a preceding chapter it is both unlawful and criminal for workmen to combine to inflict injury on one with whom they have a trade dispute, by coercing others to withhold their beneficial business relations from him, by threats that in case they do not, the combination will in turn cause injury to their business.³⁸ Now inasmuch as no principle becomes established in the development of labor union law which does not operate equally upon both employer and employe,³⁹ who stand upon a plane of perfect equality before the law, enjoying the same freedom and amenable to the same restrictions,⁴⁰ it necessarily follows that a combination of employers to coerce an employer, by threats of causing injury to his business, to discharge workmen from his employ or to refuse employment to workmen seeking it, is an unwarrantable invasion of the right of such workmen to a free labor market and such combination like the combination of labor to boycott capital, is both unlawful and criminal. This proposition is so obviously correct that no citation of authority therefor is necessary, although there are dicta which sustain it perfectly.⁴¹ The right of one seeking employment to have free opportunity to gain employment and to retain a posi-

³⁶ See *Supra* Chapter VII, *Boycotts of Capital, and Substantive Law Relating Thereto*, Section 108.

³⁷ *Pickett v Walsh*, 192 Mass. 572, 78 N. E. 753, 116 Am. St. Rep. 272, 6 L. R. A. N. S. 1067.

³⁸ See *Supra* Chapter VII, *Boycotts of Capital and Substantive Law Relating Thereto*, Sections 91, 93, 101.

³⁹ *Jersey City Printing Co. v Cassi-*

dy, 63 N. J. Eq. 259, 53 Atl. 233.

⁴⁰ *Wilmer & Silverman*, (Md.) 71 Atl. 962; *Iron Moulders' Union v Allis-Chalmers Co.*, 166 Fed. 45, 50, 20 L. R. A. N. S. 315. See also *United States v Adair*, 208 U. S. 161, 28 Sup. Ct. 277.

⁴¹ See *Atkins v W. & A. Fletcher Co.*, 65, N. J. Eq. 658, 55 Atl. 107; *Jersey City Printing Co. v Cassidy*, 63 N. J. Eq. 259, 53 Atl. 253.

tion of employment once it is gained, is as precious in the eyes of the law as the right of the employer.⁴² The formation or execution of such a conspiracy renders the members of the combination liable to a criminal prosecution, and where it is executed to the injury of the workmen against whom it is aimed they are entitled to recover the resulting damages, and are also entitled to an injunction if the usual conditions in which an injunction is granted are present.

⁴² *Brennan v United Hatters of North America*, 73 N. J. Eq. 729, 65 Atl. 165, 118 Am. St. Rep. 727, 9 L. R. A. N. S. 254.

CHAPTER X.

LIABILITY TO WORKMEN FOR PREVENTING THEM FROM WORKING BY FORCE, VIOLENCE, OR INTIMIDATION DIRECTED AGAINST THEM.

§ 145.

In a previous chapter it was shown that a combination of workmen to prevent other workmen from obtaining or retaining work by force, violence or intimidation directed against employers, or possible employers, is an unlawful invasion of the rights of such workmen, and a boycott rendering the members of the combination, civilly and criminally liable.⁴³ And in another chapter, consideration was given to the question of civil and criminal liability of combinations of workmen for the preventing of others from working by force, violence and intimidation directed against them in so far as these acts amounted to an invasion of the rights of the employers to a free labor market. As was there shown, the courts are unanimous in condemning such acts as constituting a boycott.⁴⁴ It is not, however, the rights of the employers alone which are invaded when a combination of workmen prevents or seeks to prevent other workmen from working by force, violence, or intimidation directed against them. The right of such workmen to sell their labor when, and to whom and for what price they please is also invaded.⁴⁵ Every

⁴³ See *Supra* Chapter IX, *Boycotts of Labor*, Sections 133, 134, 139.

⁴⁴ See *Supra* Chapter VII, *Boycotts of Labor and The Substantive Law Relating Thereto*, Sections 91, 93, 100.

⁴⁵ *Massachusetts*.—*Vegeahn v Guntner*, 157 Mass. 92, 44 N. E. 1077, 57 Am. St. Rep. 443, 55 L. R. A. 92.

Michigan.—*Beck v Railway Teamsters' Protective Union*, 118 Mich. 497, 77 N. W. 13, 74 Am. St. Rep. 421, 42 L. R. A. 407.

Missouri.—*Hamilton-Brown Shoe Co. v Saxey*, 131 No. 212, 32 S. W. 1106, 52 Am. St. Rep. 622; *Carter v Oster*, 134 Mo. App. 146, 112 S. W.

995; *Swaine v Wilson*, 75 Mo. App. 74.

New Jersey.—*Frank v Herold*, 63 N. J. Eq. 143, 53 Atl. 230.

New York.—*Master Stevedores' Association v Walsh*, 2 Daly 1; *Johnston Harvester Co. v Meinhart*, 60 How. Pr. 158.

Ohio.—*Perkins v Rogg*, 11 Ohio Dec. (Reprint) 585; *Brown Mfg. Co. v Local Union No. 70*, 12 Ohio Dec. N. P. 153.

Pennsylvania.—*Marietta Casting Co. v Thuma*, 28 Pa. Co. Ct. 248; *Temple Iron Co. v Carmanoski*, 10 Kulp 139.

man has the right to work for the best price he can get, but if others choose to work for less than the usual prices, the law will not permit that violence should be committed against them to prevent them from working.⁴⁶ Such interference has been characterized as an offense against the rights of the workmen coerced which is hardly distinguishable from an act which should itself injure or destroy the product of labor,⁴⁷ and as a violation of the fundamental law, which should be restrained with the utmost strength of the law.⁴⁸ No sense of wrong, however great, however, natural, or however excusable, it has been said, can justify such interference with this right. No offended sense of right, as for instance, that another is unjustly taking his job gives warrant to such interference.⁴⁹ A combination to commit acts of this character is a conspiracy which is both unlawful and criminal at common law,⁵⁰ and under a statute making it an offense for any person by violence to person or property of another or by threats or intimidation, to force any workman to quit work,⁵¹ and gives a right of action to the workman injured thereby,⁵² and also the right to relief by injunction where the injury is irreparable.⁵³ And in accordance with the well settled principles governing the law of conspiracy, if several conspire to prevent a workman from exercising his trade by interference of the character under consideration, all are liable for the acts of any one of them committed in pursuance of the conspiracy.⁵⁴ So in many States statutes have been enacted which in substance provide that

Vermont.—State v Stewart, 59 Vt. 273, 9 Atl. 559, 59 Am. Rep. 710.

Virginia.—Crump v Com., 84 Va. 927, 6 S. E. 620, 10 Am. St. Rep. 895.

Wisconsin.—Fischer v State, 101 Wis. 23, 76 N. W. 594.

United States.—Pope Motor Co. v Keegan, 150 Fed. 148, 149; Union Pac. R. Co. v Ruef, 120 Fed. 102; Southern R. Co. v Machinists' Local Union, 111 Fed. 54.

England.—Lyons v Wilkins, L. R. 1 Ch. (1896) 811; Rex v Batt, 6 Car. & P. 458.

⁴⁶ Rex v Batt, 6 Car. & P. 458.

⁴⁷ Johnston Harvester Co. v Mein-

hart, 60 How. Pr. (N. Y.) 108, 9 Abb. (N. C.) 395.

⁴⁸ Marietta Casting Co. v Thuma, 28 Pa. Co. Ct. 248.

⁴⁹ Pope Motor Car Co. v Keegan, 150 Fed. 148, 149.

⁵⁰ See *Supra* cases cited in third note in this section.

⁵¹ O'Neil v Longman, 9 Cox C. C. 363.

⁵² Carter v Oster, 134 Mo. App. 146, 112 S. W. 995; Union Mfg. Co. v Local Union No. 70, 12 Ohio Dec. N. P. 753.

⁵³ Brown Mfg. Co. v Local Union No. 70, 12 Ohio Dec. N. P. 753.

⁵⁴ People v Holmes, 118 Cal. 444, 50 Pac. 675.

it shall be an offense to prevent a person from working by the use of such means as force, violence or intimidation.⁵⁵ In construing one of these statutes, it was held that a complaint which alleges that defendant an officer of a labor union, for the purpose of preventing certain persons continuing in the employment in which they were then and there engaged, so that their places be taken and their work be performed by union men, used threats, intimidation and coercion by saying to them: "You cannot build this building. I will fight it if it takes all summer; and if your city will not protect us we will get the militia," sufficiently states an offense within a statute making it an offense for any person, by threats, intimidation, force or coercion of any kind to hinder or prevent a person engaging in or continuing in any lawful work or employment either for himself or as a wage worker or who shall attempt to so hinder or prevent.⁵⁶

⁵⁵ Statutes of this character have been enacted by the legislatures of the following states, Alabama, Connecticut, Georgia, Maine, Massachusetts, Mississippi, Missouri, New

York, Oregon, Pennsylvania, Utah, Vermont and Wisconsin, and perhaps others.

⁵⁶ *Fischer v State*, 101 Wis. 23, 76 N. W. 594.

CHAPTER XI.

EXERCISE BY UNION OF DISCIPLINARY MEASURES AGAINST ITS MEMBERS AS AFFECTING RIGHTS OF THIRD PARTIES.

- § 146. To compel members to strike or continue on strike.—Introductory statement.
- § 147. Where strike is unlawful.
- § 148. Where strike is lawful but members sought to be coerced are under contract to work for definite time.
- § 148a. Where strike is lawful and members sought to be coerced are not under contract to work for definite time.—Introductory statement.
- § 149. Question considered on weight of authority.
- § 150. Question considered on principle.
- § 151. To compel members to withhold patronage.

§ 146. To compel members to strike or continue on strike.—Introductory statement.

Whether or not a labor union, may, in aid of a strike which it has declared, employ, in respect of members unwilling to quit their employment, such coercion as is incidental to the imposition of, or threats to impose, penalties such as fines, suspension or expulsion, in order to compel them to join the strike, or to continue on strike, after going out, is a question of paramount importance to the union, and likewise of considerable importance to the party whose business the strike will affect detrimentally. This question comes up for consideration in connection with three distinct and well-defined states of facts: 1st. Where the strike is unlawful. 2nd. Where the strike is lawful, but the members against whom the coercive measures are directed are under contract to work for a definite time. 3rd. Where the strike is lawful and the members against whom such measures are directed, are not under contract to work for a definite time, but may quit their employment at will.

§ 147. —Where strike is unlawful.

The question is one of easy solution, where the strike itself is unlawful—i. e., where the strike is in breach of contract by those engaged therein, to serve for a definite time, or where the end sought to be gained thereby is one which the law does not regard as lawful.

In such case any act in furtherance of the strike will be deemed unlawful, however innocent it might be if done to attain a legitimate end.⁵⁷ In consequence, threats to impose, or the imposition of penalties such as fines, suspension, or expulsion for the purpose of keeping in line, members unwilling to join or continue in an unlawful strike is unlawful.⁵⁸ Nor is it necessary that these threats be express. The mere calling of a strike or the ordering of those who have quit work to stay out necessarily imports that those who disobey the orders of the union will be visited with the penalties provided for by its constitution and by-laws for their disobedience.⁵⁹ The principles here enunciated have been applied both to cases where acts of the character under consideration were directed

⁵⁷ *A. R. Barnes & Co. v Chicago Typographical Union*, 232 Ill. 402, 83 N. E. 932, 122 Am. St. Rep. 129, 14 L. R. A. N. S. 1150; *Reynolds v Davis*, 198 Mass. 294, 84 N. E. 457, 17 L. R. A. N. S. 162; *Hillenbrand v Building Trades' Council*, 14 Ohio Dec. 628.

⁵⁸ *Schneider v Local Union No. 60*, 116 La. 270, 40 So. 700, 5 L. R. A. N. S. 891, 114 Am. St. Rep. 549; *Coons v Chrystie*, 53 N. Y. Suppl. 668, 24 Misc. 296; *Purvis v United Brotherhood of Carpenters & Joiners*, 214 Pa. St. 344, 60 Atl. 585, 12 L. R. A. N. S. 242, 112 Am. St. Rep. 272; *In Re Charge to Grand Jury*, 62 Fed. 828; *Quinn v Leathem*, (1901) A. C. 495, 70 L. J. P. C. 76, 85 L. T. 289, 50 W. R. 139; and see opinion of Sheldon, J. in *L. D. Wilcutt & Sons Co. v Driscoll*, 200 Mass. 110, 85 N. E. 897; *Wabash R. Co. v Hannahan*, 121 Fed. 563.

⁵⁹ *Alfred W. Booth & Bro. v Burgess*, 72 N. J. Eq. 181, 65 Atl. 226; *Coons v Chrystie*, 53 N. Y. Suppl. 668, 24 Misc. 296, in which it was said: "It is claimed that the defendants did not cause the plaintiff's workmen to stop work through threats

or acts of intimidation, which may be true so far as we have to deal with the physical deportment of these "walking delegates," but if, at the mere nod or word of the latter, the plaintiff's workmen were led immediately to abandon employment which they had been well content to accept, and which, but for the walking delegates' appearance upon the scene, they were just as content to retain, the inference is irresistible that they were coerced by the anticipation of some recognized penalty, and the absence of threats at the moment would signify merely that they were gratuitous and unnecessary;" *Purvis v United Brotherhood of Carpenters & Joiners*, 214 Pa. St. 344, 60 Atl. 585, 12 L. R. A. N. S. 242, 112 Am. St. Rep. 272. In this case it was said: "When the members of Local No. 500, who were willingly working material from plaintiff's mill, were visited by the business agent of the union, who called them off, they doubtless knew that it meant fine or expulsion and ostracism if they continued to work." See also *Barr v Essex Trades' Council*, 53 N. J. Eq. 101, 30 Atl. 881.

against capital, and where they were directed against labor."⁶⁰ Where the threat of fine and expulsion is employed for the purpose of coercing the employes of a large number of different employers to refrain from working for them, in order to coerce all these employers into boycotting a third person with the ultimate object of coercing the latter in respect of matters with which the employes coerced into striking have no concern whatever, the scheme becomes an attack upon his right to a free labor market.⁶¹ It has accordingly been held that officers and members of a union may be enjoined from attempting to coerce into striking, members in the employ of persons with whom they have no trade dispute, by threats of fine and expulsion, for the purpose of coercing such employers into refraining from purchasing materials manufactured by a person with whom the union has a trade dispute.⁶² It has likewise been declared unlawful for a combination of officers of a union to order strikes under threats of enforcing their orders by the infliction of effective penalties, where the object of these acts is not to further the interests of the members of the union, but to gratify the personal ambition or malice of the officers, and where the members thus coerced are employes of a carrier engaged in the transportation of the mail, such officers are guilty of a conspiracy to obstruct and retard the mails, an offense punishable under Rev. Stat. U. S. §§ 3995, 5440.⁶³ And the carrier would, unquestionably be entitled to an injunction against such acts. So it was held that where officers of a union caused its members in plaintiff's employ to quit work not that they might secure better wages elsewhere, or to protect the scale of wages, but solely to the end that plaintiff should not have the aid of such members in his business, he not being a member of an association of masters recognized by the union, they were engaged in an unlawful undertaking, the continuance of which would be enjoined.⁶⁴ An application of the rule to a boycott of labor was also

⁶⁰ *Schneider v Local Union No. 60*, 116 La. 270, 40 So. 700, 5 L. R. A. N. S. 891, 114 Am. St. Rep. 549; *Alfred W. Booth & Bro. v Burgess*, 72 N. J. Eq. 181, 65 Atl. 226; *Purvis v United Brotherhood of Carpenters & Joiners*, 214 Pa. St. 344, 60 Atl. 585 12 L. R. A. N. S. 242, 112 Am. St. Rep. 272.

⁶¹ *Alfred W. Booth & Bro. v Bur-*

gess, 72 N. J. Eq. 181, 65 Atl. 226.

⁶² *Purvis v United Brotherhood of Carpenters & Joiners*, 214 Pa. St. 344, 63 Atl. 385, 12 L. R. A. N. S. 242, 112 Am. St. Rep. 272.

⁶³ *In Re Charge to Grand Jury*, 62 Fed. 828.

⁶⁴ *Coons v Chrystie*, 53 N. Y. Suppl. 668, 669, 24 Misc. 296.

made in an interesting and instructive case decided by the Louisiana Supreme Court. Plaintiffs who were members of defendant's union, and also public officers,—members of a city board of examiners of plumbers were fined and suspended by their union for refusal to vote in accordance with its direction for a designated member of the union to fill the public office of plumbing inspector. The union also adopted resolutions that members who worked in shops with plaintiffs after knowledge that they were working there be fined; that members who had worked with them one day be fined two days' wages, and if they continued to work with them they be fined the additional sum of \$25.00; that the fine so collected be paid to brothers who quit work on account of plaintiffs. In consequence of these acts plaintiffs were discharged from employment. The court held that any rule or resolution of the union requiring plaintiffs to vote for a person designated by the union was void as being against public policy and an injunction was awarded enjoining the union from coercing its members by the imposition of fines to refuse to work with plaintiff. Judgment was also given plaintiff against the union and its members participating in the acts complained of for actual and exemplary damages, it being held that not only damages for loss of wages were recoverable but also those resulting from mental suffering and injury to reputation and punitive damages.**

§ 148. —Where strike is lawful but members sought to be coerced are under contract to work for definite time.

Even in case of a lawful strike, the imposition of, or threats to impose, penalties such as fines, suspension, or expulsion, to cause members to join in or continue on strike, would be unlawful, if the members on whom this pressure was brought to bear, were under contracts to work for a definite time for the employer against whom the strike had been declared, and such acts may be enjoined.** It is well settled that even simple persuasion cannot be employed to induce persons to join a strike, in violation of their contracts of employment, unless those employing the persuasion are acting in the

** *Schneider v Local Union No. 60*, 116 La. 270, 40 So. 700, 5 L. R. A. N. S. 891, 114 Am. St. Rep. 549.

** *A. R. Barnes & Co. v Berry*, 156 Fed. 72; *Wabash, etc. R. Co. v Han-*

nahan, 121 Fed. 563. And see *Branch v Roth*, 10 Ont. Law Rep. (Can.) 284; and opinion of Sheldon, J. in *L. D. Wilcutt & Sons Co. v Driscoll*, 200 Mass. 110, 85 N. E. 897.

exercise of some equal or superior right,⁶⁷ and *a fortiori* would methods of a coercive nature be unlawful.

§ 148a. —Where strike is lawful and members sought to be coerced are not under contract to work for definite time.—Introductory statement.

The remaining question for consideration under this head is this: Can a labor union, in aid of a strike which it has declared use against members unwilling to quit their employment, such coercion as is incidental to the imposition of or threats to impose fines, suspension or expulsion, to force them to join the strike, or continue on strike after going out, where the strike itself is lawful, and the members against whom the coercive measures are directed are under no continuing contract of employment with the employer against whom the strike is declared, but may quit the service at will? While this question is not free from difficulty, and the decisions are not in harmony, it is believed that both on principle and on the weight of authority, the question must be answered in the affirmative. This question will be considered: 1st. On the weight of authority. 2nd. On principle.

§ 149. —Question considered on weight of authority.

In *L. D. Wilcutt & Sons Co. v Driscoll*,⁶⁸ in which the question was considered at great length, it was held by a divided court, that the imposition of, or threats of imposition of fines of a coercive nature by a union, in furtherance of a strike, to force into joining the strike, members who were unwilling to do so, is an unlawful injury to the employer against whom the strike is in operation, although the strike itself is a lawful one, and although the members of the union in his employ against whom the coercive measures are directed, violate no contractual right of the employer by leaving, and that the employer is entitled to an injunction against such acts. This decision assumes to follow, and possibly is sustained by *Martell v*

⁶⁷ *Parker v Bricklayers' Union*, 10 Ohio Dec. (Reprint) 458, 21 W. L. B. 223; *Jersey City Printing Co. v Cassidy*, 63 N. J. Eq. 759, 53 Atl. 230; *South Wales Miners' Federation v Glamorgan Coal Co.*, (1905) A. C. 239; *Knudsen v Benn*, 123 Fed.

636; *Southern R. Co. v Machinists' Local Union*, 111 Fed. 490. And see *W. & A. Fletcher Co. v International Ass'n of Machinists'* (N. J.), 55 Atl. 1077.

⁶⁸ 200 Mass. 110, 85 N. E. 897.

White,⁶⁹ another Massachusetts case which held that although a combination of manufacturers formed for the purpose of competing more successfully with outsiders in the same business is not unlawful, yet the enforcement of a by-law prohibiting members from dealing with those not members, by the imposition of fines so large as to be coercive in their nature, will give a right of action to a manufacturer not a member of the association, whose business is injured thereby; *Martell v White* is practically identical in its facts and in the conclusions reached with *Boutwell v Marr*,⁷⁰ a decision of the Supreme Court of Vermont, and gives unqualified approval to the reasoning of that Court. So, as far back as the year 1875, there is a *dictum* by Judge Davis in a concurring opinion, written by him in *People v Benevolent Society of Operative Masons*,⁷¹ which is to the effect that a by-law which compels a member to join in a strike by punishing him for refusing to do so, is void as against public policy. On the other hand there are a number of decisions involving labor disputes which are squarely in conflict with the Wilcutt case, and others which at least inferentially support them. Thus in *Jetton-Dehkle Lumber Co. v Mather*,⁷² a decision of the Florida Supreme Court, it was held that an employer of labor is not entitled to an injunction to prevent officers and members of a union acting in furtherance of a lawful strike from fining or expelling, or from threatening to fine or expel members, in order to prevent them from working for such employer; that courts will not interfere with labor unions in the peaceable enforcement of their rules. In *Longshore Printing & Publishing Co. v Howell*,⁷³ it was held that the ordering by officers of a union of its members to cease working for one against whom a justifiable strike had been declared, under penalty of being dealt with, in accordance with the rules and by-laws of the union (which provided for suspension or expulsion), was not in violation of a statute making it a misdemeanor for a person by threats, force and intimidation to prevent an employe from continuing or performing his work, and that the employer was not entitled to an injunction against such acts. In *Mayer v Journeymen Stonecutters' Ass'n*,⁷⁴ it was held that an injunction will not be granted an

⁶⁹ 185 Mass. 255, 69 N. E. 185, 64 L. R. A. 260, 102 Am. St. Rep. 341.

⁷⁰ 71 Vt. 1, 42 Atl. 607, 76 Am. St. Rep. 746, 43 L. R. A. 803.

⁷¹ 3 Hun. 381, 6 T. & C. 85.

⁷² 53 Fla. 969, 43 So. 590.

⁷³ 26 Ore. 527, 38 Pac. 547, 46 Am. St. Rep. 640, 28 L. R. A. 464.

⁷⁴ 47 N. J. Eq. 519, 20 Atl. 492.

association of employers, to prevent a union from enforcing one of its rules whereby members who work for an employer with whom the union has a trade dispute are denounced as "Scabs" and expelled. In *Gray v Building Trades' Council*,⁷⁵ it was held not unlawful for officers of a union to "order" their members to cease working on premises where complainant, with whom the union had a trade dispute, was engaged as doing work as a contractor, and that an injunction awarded him, should be modified in so far as it prohibited such acts. This decision is not distinguishable from the Florida case and others in line with it herein cited. While it does not appear that the "order" to quit work was accompanied by threats of the imposition of a penalty, the "order" in itself necessarily implies that disobedience thereof will be followed by the imposition of a penalty.⁷⁶ In *Com. v Sheriff*,⁷⁷ the following statutory provisions came up for construction. Whosoever shall hinder persons who desire to labor for their employers from so doing, or other persons from being employed as laborers, shall still be subject to prosecution and punishment as for criminal conspiracy. The use of lawful and peaceable means having for their object a lawful purpose, shall not be regarded as in any way hindering persons who desire to labor and the use of force, threats or menace of harm to persons or property shall alone be regarded as in any way hindering persons who desire to labor for their employers from being employed as laborers. Under these statutes it was held that members of a union who engage in a strike and notify other members to strike, cannot be held for a conspiracy unless they hinder others from working by using force, threats or menaces, and that where a committee from a union visits a place where members of the union are working and notifies them that the demand of the union has been refused by their employer and that they must therefore quit work in accordance with the by-laws of the union, such notice is not such a hindering of the others from working as will make the committee liable for conspiracy by molesting or intimidating the employer in his business. In *Thomas v Cincinnati, etc. R. Co.*,⁷⁸ a proceeding by a receiver to punish a labor union official for contempt in wrongfully inciting employees of the railroad managed by the receiver to quit the serv-

⁷⁵ 91 Minn. 171, 97 N. W. 663, 103 Am. St. Rep. 477, 63 L. R. A. 753.

⁷⁷ 15 Phila. (Pa.) 393.

⁷⁶ See *Supra* this chapter, section 148.

⁷⁸ 62 Fed. 803, 817, 4 Inters. Com. Rep. 788.

ice, and to enjoin the continuance of such acts, it was said by Judge Taft, that officers of a union duly vested with authority to call strikes, may order members "on pain of expulsion from their union, peaceably to leave the service of their employer, because any of the terms of their employment are unsatisfactory." Inasmuch as this proceeding is not a controversy between a union and its members, but between an employer of labor and a union represented by its officers, it is a legitimate inference that the language used by Judge Taft was intended to apply to the latter species of controversy and not intended to be limited to controversies between a union and its members where no rights of third parties were involved. In *Wabash R. Co. v Hannahan*,⁷⁹ the court refused to grant an injunction on a bill filed by a railroad company to prohibit officers of a union from calling a strike and "compelling" its members in complainant's employ to quit the service, it appearing that the strike was for the purpose of obtaining better terms of employment. In this case it was urged that the acts of the officers were "subversive alike of the fundamental rights of the employer to manage his own business, and of the employes to bestow their labor as they will." In answering this contention, the court (by Judge Adams) declared itself entirely in accord with the views of Judge Taft (quoted in a preceding paragraph of this section), and in addition used the following language in disposing thereof. "This kind of argument enters deeply into the domain of political science, and might well be addressed to a body of constructive statesmen or men originally contemplating a labor organization. *It is an argument that would be pertinent against the organization of society into government* (italics are ours). The will of the individual must consent to yield to the will of the majority, or no organization either of society into government, capital into combination, or labor into coalition can ever be effected. The individual must yield in order that the many may receive a greater benefit. The right of labor to organize for lawful purposes and by organic agreement to subject the individual members to rules, regulations, and conduct prescribed by the majority is no longer an open question in the jurisprudence of this country." In *Lefebvre v Knott*,⁸⁰ it appeared that an association of master plasterers was notified by an association of journeymen plasterers

⁷⁹ 121 Fed. 563, 568, 571.

⁸⁰ 32 Que. Sup. Ct. 441, 13 Can. Cr. Cas. 223.

that after a designated date they would insist on a specified advance in wages, to be enforced by a strike. The master plasterers' association then entered into an agreement that in the event of a strike being declared by the union, all the members of their association "shall immediately lock out all members" of the journeymen plasterers' association, "and cease employing the same." By a further clause in the agreement it was provided that "the subscribers and each of them severally bind themselves to pay into a fund, as liquidated damages for the violation of any clause in the present agreement, the sum of \$500 as an admission of said liability and to secure the prompt payment of said damages, each of the said subscribers shall give a note," executed to designated parties as trustees for the association, and deposited with the secretary of its board. It was held: 1st. That the agreement to lock-out employes, in the circumstances under which it was made was not unlawful as in restraint of trade or of the freedom of contracting. 2nd. That the members of the association might lawfully bind themselves by means of the penal clause which was to be the sanction of their mutual agreement, and that where some of the members, violated the lock-out clause and yielded to the strikers, without withdrawing from the coalition, they thereby rendered themselves liable to the obligation of paying the penalty which was to be the price of their defection. In *Bohn Mfg. Co. v Hollis*,⁸¹ it was held that an agreement between the members of a retail lumber dealers' association not to deal with any wholesale dealer who sells directly to customers not dealers, at a point where a member of the association is doing business, and containing provisions for notification to all members when the wholesale dealer makes such a sale and for the expulsion of members who dealt with him is not unlawful and such wholesale dealers cannot enjoin the sending out of such notices. The infliction of the penalty of expulsion, it was said, is not coercion. "It was wholly a matter of their own free choice whether they preferred to trade with plaintiff or the association." In *Mogul Steamship Co. v McGregor*,⁸² it was held that a combination of ship-owners entered into for the purpose of securing all the freight shipped at certain ports, might, among other means, to render the combination effective, prohibit their

⁸¹ 54 Minn. 223, 55 N. W. 1119, 21 L. R. A. 337, 40 Am. St. Rep. 319.

⁸² 23 Q. B. D. 598 (affirmed in [1902] A. C. 25, 66 L. T. 1, 40 W. R. 337).

agents on pain of dismissal from acting as agents for competing lines of ships. In *Re Charge to Grand Jury*,⁸³ Judge Grosscup charged in substance that officers of a union acting in combination who call strikes under threats of enforcing their orders by the infliction of effective penalties, are not guilty of the offense of conspiring to retard and obstruct the mails, if they acted in good faith and for the purpose of advancing the interests of the union. It is thus apparent from a review of the decisions, that the decided weight of authority is against the *Wilcutt Case*. Its authority is still further weakened by the exceptionally able dissenting opinion of Judge Sheldon in which Chief Justice Knowlton concurred, and by the further fact that Judge Loring agreed with the reasoning of the dissenting opinion, but considered that the case was ruled by *Martell v White* and that the doctrine of *stare decisis* must apply. "It would," he said, "be hard to measure the disastrous consequences to the administration of justice, if it were thought that a change in the personnel of the court is to be the occasion of re-hearing what has been decided."⁸⁴

§ 150. — — Question considered on principle.

Having shown what the general trend of authority is, an attempt will be made to show how the question should be decided on principle, and in reaching an intelligent conclusion it is necessary at the outset to ascertain with precision what the primary rights of the parties, in contests of the character under consideration are, and also the relation of these rights to each other. The right of the employer may be described as the right to a free labor market, to have labor flow freely to him,⁸⁵ in other words the right to employ those who are willing to work for him, upon such terms as may be mutually agreed upon.⁸⁶ The right of employes, member of a union,

⁸³ 62 Fed. 828.

⁸⁴ See opinion of Loring, J., 200 Mass. 110, 139, 140, 85 N. E. at page 910.

⁸⁵ *Jersey City Printing Co. v Cassidy*, 63 N. J. Eq. 759, 53 Atl. 230; *Atkins v W. & A. Fletcher Co.*, 65 N. J. Eq. 658, 55 Atl. 1074; *Barr v Essex Trades' Council*, 53 N. J. Eq. 101, 30 Atl. 881; *L. D. Wilcutt & Sons Co. v Driscoll*, 200 Mass. 110,

85 N. E. 897; *Iron Moulders' Union v Allis-Chalmers Co.*, 166 Fed. 45, 20 L. R. A. N. S. 315; and see *Quinn v Leathem*, (1901) A. C. 495, 70 L. J. P. C. 76, 85 L. T. 289.

⁸⁶ *Maryland*.—*My Maryland Lodge v Adt.*, 100 Md. 238, 56 Atl. 721, 68 L. R. A. 252.

Massachusetts.—*Vegelahn v Guntner*, 157 Mass. 92, 44 N. E. 1077, 57 Am. St. Rep. 443.

so far as the matter under consideration is concerned, is the right of persons not under contract to serve for a definite time, to strike—that is to quit their employment by concerted action—for the purpose of obtaining better terms of employment, as for instance shorter hours of labor or an increase of wages, and to use all means not in themselves unlawful nor inconsistent with the rights of others, in order to render the strike effective,⁸⁷ the latter right being necessarily involved in the right to strike. The right to strike for the purpose and under the conditions mentioned, is so comprehensive and compelling in its nature, that leaving out of consideration a limited number of early decisions, the rulings in which are probably attributable to the influence of the harsh and tyrannical English statutes relating to laborers, no reported decisions can be found which in the slightest degree limits it. The right has been announced by the courts with such frequency that it is no longer an open question.⁸⁸ In some special instances it has been argued with some degree of plausibility that the right was subject to limitations. The instances to which allusion is made are those which it was urged that the right was limited or non-existent in cases where the employer is a receiver, or where it was urged that the strike was prohibited by some federal legislation, such as the Sherman Anti-Trust Act, the Interstate Commerce Act, or the statute making it an offense to retard the mails. In the face of these contentions it has been uniformly held that the right is in no way affected by the fact that the employer is a receiver managing property under the control of the court,⁸⁹ nor

Michigan.—Beck v Railway Teamsters' Protective Union, 118 Mich. 497, 77 N. W. 13, 74 Am. St. Rep. 44, 42 L. R. A. 407.

New Jersey.—Brennan v United Hatters of North America, 73 N. J. L. 719, 65 Atl. 165, 118 Am. St. Rep. 727, 9 L. R. A. N. S. 254; Frank v Herold, 63 N. J. Eq. 443, 52 Atl. 153.

New York.—Master Stevedores' Association v Walsh, 2 Daly 1.

Pennsylvania.—Purvis v United Brotherhood of Carpenters & Joiners, 214 Pa. St. 344, 63 Atl. 585, 12 L. R. A. N. S. 242, 112 Am. St. Rep. 272.

⁸⁷ Karges Furniture Co. v Amalgamated

Woodworkers' Union, 165 Ind. 421, 75 N. E. 877, 2 L. R. A. N. S. 788; Goldfield Consolidated Mines' Co. v Goldfield Miners' Union, 159 Fed. 500, 519. And see Gray v Building Trades' Council, 91 Minn. 171, 97 N. W. 663, 63 L. R. A. 753, 103 Am. St. Rep. 477; Morris Coal Min. Co. v Guy, 14 Pa. Dist. Rep. 600.

⁸⁸ See *Supra* Chapter II, *The Rights of Workmen to Combine and The Purposes for which Combination is Lawful*, Section 6.

⁸⁹ See *Supra* Chapter II, *The Right of Workmen to Combine and the Purposes for which Combination is Lawful*, Section 8.

by the Sherman Anti-Trust Act, although the cost of transporting interstate freight would be enhanced thereby,⁹⁰ nor by the Interstate Commerce Act, though the strike might incidentally result in interference with the interchange of interstate traffic with connecting lines,⁹¹ nor by Section 3995, of the Revised Statutes of the United States (making it an offense to wilfully retard the mails), even though the mails may be incidentally retarded by the strike.⁹² It is beyond controversy, therefore, that under any and all circumstances, the right of employes not bound by contract to serve for a definite term, to engage in a strike for better terms of employment, is superior to the right of the employer to a free labor market.

Having ascertained what these primary rights are, and their relation to each other, the way is cleared for a consideration of the principle question involved, i. e., whether in aid of this superior and unqualified right to strike, the union and its members, may without infringing on the employer's qualified and inferior right to a free labor market, use the enginery of the rules and by-laws of the union and the accompanying penalties to force into joining the strike or continuing on strike, such members as are unwilling to quit their employment, and cast in their lot with the common cause. Now the general rule is well settled that a labor union or other voluntary association, has the right to make rules and by-laws for the government of its members and the regulation of their conduct in respect of matters affecting the common welfare,⁹³ and to punish its members, by fine, suspension or expulsion, according to the gravity of the offense, for disobedience of such rules and by-laws, or orders made in accordance therewith by officers vested with the requisite authority,⁹⁴ or for conduct in violation of the fundamental objects of the union,⁹⁵ the right being subject to the limitation that it cannot make and enforce, rules and by-laws which are in contravention of

⁹⁰ See *Infra* Chapter XIV, *Interference with or Obstruction of Interstate Commerce*, Section 189.

⁹¹ See *Infra* Chapter XIV, *Interference with or Obstruction of Interstate Commerce*, Sections 193, 194.

⁹² See *Infra* Chapter XV, *Obstructing and Retarding the Mails*, Sections 199, 201.

⁹³ See *Infra* Chapter XXIII, *Internal Administration of Unions—Con-*

stitutions, Rules and By-Laws, Section 280.

⁹⁴ See *Infra* Chapter XXIII, *Internal Administration of Unions—Constitutions, Rules and By-Laws*, Section 280.

⁹⁵ See *Infra* Chapter XXIII, *Internal Administration of Unions—Constitutions, Rules and By-Laws*, Section 280.

the laws or of public policy."⁹⁶ And the constitution, rules and by-laws of a union constitute a contract between the union and its members.⁹⁷ The right to make and enforce rules and by-laws for the government of its members is essential to the existence of any union or association, for if each member may determine his own line of conduct for himself without responsibility of any character to the organization to which he belongs, and owes his allegiance, then, it is, in a large measure, shorn of its power to accomplish the objects for which it was formed. To repeat the language of Judge Adams quoted in a preceding paragraph of this chapter, "The will of the individual must consent to yield to the will of the majority, or no organization either of society into government, capital into combination, or labor into coalition can ever be effective. The individual must yield in order that the many may receive a greater benefit."⁹⁸ Also pertinent in this connection are the following quotations: "The risk of fines and expulsion is one voluntarily assumed by the members entering the union, and if no longer willing to pay the price, if the advantages to be derived are not equal to the burdens assumed, each member has a perfect right to withdraw from the union."⁹⁹ "When one chooses voluntarily to unite with others of the same craft in forming an organization for the purpose of bringing about by the united action of all its members more favorable conditions of employment, he is bound, so long as he desires to remain a member of that organization, to submit within certain limits his own freedom alike of judgment and of action to the judgment of his associates, and to conform his conduct to that standard which they shall have agreed to be for the best interest of all and of each. Unity of action would be impossible upon any other terms."¹ Indeed, this general right of a union to make and enforce by penalties, rules and by-laws for the government of its members, has never been denied, where the rights of the union and its members only are involved. Can it be held un-

⁹⁶ See *Infra* Chapter XXIII, *Internal Administration of Unions—Constitutions, Rules and By-Laws*, Section 285.

⁹⁷ See *Infra* Chapter XXIII, *Internal Administration of Unions—Constitutions, Rules and By-Laws*, Section 287.

⁹⁸ *Wabash R. Co. v Hannahan*, 121 Fed. at page 571.

⁹⁹ *Jetton-Dehkle Lumber Co. v Mather*, 53 Fla. 969, 43 So. 590.

¹ Opinion of Sheldon, J. in *L. D. Wilcutt & Sons Co. v Driscoll*, 200 Mass. 110, 132, 133, 85. N. E. at page 908.

lawful, then, as between a union and its members, for the union to impose penalties, in accordance with its rules and by-laws, on members who refuse to quit work in aid of a justifiable strike, or to continue on strike after going out? The answer is that the lawfulness of such action by the union, as between itself and its members, is amply sustained by many well-considered decisions,² and denied by none, nor could any valid reason be assigned for such denial. It is hardly possible to conceive of a case where the right of a union to exercise disciplinary measures would be stronger.

Nor can any sound reason be advanced why this right should be restricted or denied, merely because the employer may suffer incidental damage thereby. This is demonstrated by the foregoing review of the decisions, which, establishes beyond controversy the following rules. 1st. The right to maintain a lawful strike is superior to the employer's right to a free labor market. 2nd. A labor union has the general right to make and enforce by suitable penalties, rules and by-laws for the government of its members, and the regulation of their conduct affecting the common welfare. 3rd. In the exercise of this general right, it is lawful as between the union and its members, for the union to impose penalties on insubordinate members, in accordance with its rules and by-laws so providing for not joining in a justifiable strike, or for not continuing on strike after going out. 4th. The rules and by-laws of the union constitute a contract between the union and its members. 5th. A contract between the union and its members—through its rules and by-laws—binding them to aid in a lawful strike by joining therein when so ordered is not unlawful or against public policy. It follows then that in order for the courts to hold it unlawful for the union, in furtherance of a lawful strike, to impose or threaten to impose, on its members in accordance with its rules and by-laws so providing, penalties, such as fines, suspension or expulsion, for the purpose of compelling them to join in, or continue on strike, it is necessary to accept as sound law, the following proposition: Notwithstanding the facts that the right of the union and its members to maintain a lawful strike—to obtain better terms of employment—is superior to the right of the employer to a free labor market, and that the refusal of insubordinate members to join in or

² See *Infra* Chapter XXIII, *Internal Administration of Unions—Constitutions, Rules and By-Laws*, Section 280.

continue on such strike when declared, is in violation of a valid contract between them and the union binding them to do so, and lessens its power to render effective the exercise of this superior right, yet it is a violation of the employer's qualified and inferior right to a free labor market for the union to use means lawful as between itself and its members—and the only means it possesses having a particle of efficacy—in order to prevent such breach of contract in derogation of its superior right. The mere statement of this proposition carries with it its own refutation, and there is no possible point of view from which it can be upheld.

§ 151. To compel members to withhold patronage.

Having shown the circumstances under which a union may or may not compel its members to strike or continue on strike by imposing or threatening to impose penalties on them, it remains to be considered whether it may pursue the same measures to compel its members to withhold their patronage from some party or parties designated by the union as a means of effecting some object which it has in view. As stated in a previous chapter, members of a union, acting in concert, may lawfully withhold their patronage from a party to effect any purpose for which a strike against him would be lawful.³ It would seem therefore that the union may use the coercive methods under consideration to compel its members to withhold patronage under circumstances where they could make use of such methods to compel their members to strike or continue on strike, but under no other circumstances. For instance, it seems clear that a union could not impose or threaten to impose penalties on its members to compel them to withhold their patronage from customers of a party with whom the union has a trade dispute, in order to force such customers to withhold their patronage from him and thus compel him to yield to some demand made by the union. In a New Jersey decision in which a question arose as to the right to use coercive measures, of the character under consideration, the facts were as follows: Complainant, the proprietor of a daily paper determined to use plate matter in the make-up of his paper, notwithstanding the interdictive resolution of the local Typographical Union of which all his employes were members. Some of them struck and the union withdrew its endorsement of

³See *Supra* Chapter VII, *Boycotts Relating Thereto*, Section 71.
of Capital and The Substantive Law

the paper and reported the matter to the Essex Trade Council, a representative association composed of officers of many unions, in which the Typographical Union and other unions were affiliated, the whole comprising a body of workmen in Essex County of a purchasing capacity of \$400,000 a week. The trade council thereupon ordered the members of all the unions affiliated with it, only one of which was interested in the dispute, to cease patronizing the paper, or anyone having business relations with it. It was held that a boycott of a newspaper started under these circumstances, in pursuance of which the members of the various societies were coerced by fear of penalties to cease buying or advertising therein was an actionable wrong, and that the nature of the injury was such that the issuance of an injunction was authorized.⁴ So in one of the contempt cases arising out of the famous Buck's Stove and Range Company boycott, it was said: "A labor organization can conduct an unlawful boycott as effectually by compelling its own members to refrain from dealing with the party boycotted, as by coercing others into similar action."⁵

⁴ *Barr v Essex Trades' Council*, 53 N. J. Eq. 101, 30 Atl. 801.

⁵ *Gompers v Buck's Stove & Range Co.*, (D. C.) 37 Wash. L. Rep. 706, 711.

CHAPTER XII.

CONTRACTS BETWEEN UNIONS AND EMPLOYERS PROVIDING FOR EMPLOYMENT OF UNION MEN ONLY.

§152. Introductory statement.

§ 153. Contract between union and employer engaged in private enterprise.
—The New York decisions analyzed.— — —Curran v Galen.

§ 154. Jacobs v Cohen.

§ 155. Mills v United States Printing Co.

§ 156. Rules deducible from New York decisions.

§ 157. Decisions of other jurisdictions.

§ 158. Contracts for public work requiring union labor exclusively.—State-
ment of rule.

§ 159. Reasons on which rule is based.

§ 160. Applications of rule.

§ 152. Introductory statement.

Contracts between an employer or an association of employers and a labor union, providing for the employment of members of the union only are of very recent origin, and the decisions in respect of their validity few in number and not altogether harmonious.

§ 153. Contract between union and employer engaged in private enterprise.—The New York decisions analyzed.— —Curran v Galen.

Curran v Galen,⁶ a decision of the New York Court of Appeals affirming a decision of the general term of the Supreme Court,⁷ and decided in 1897 is the earliest case on the question in a court of last resort and was decided on a demurrer to the answer. Inasmuch as a later decision of the same court on a similar state of facts assumes to distinguish Curran v Galen, it is thought proper to set out the facts of both cases at some length. Curran v Galen, was an action against members of a union for damages for conspiring together to injure plaintiff by taking away his means of earning a livelihood and preventing him from obtaining employment. The

Cross References.

Strikes to compel employer to hire
union men only, see *Supra* Chapter
STRIKES, Sections 35-41.

⁶ 152 N. Y. 33, 46 N. E. 297, 57
Am. St. Rep. 496, 37 L. R. A. 802.

⁷ In 77 Hun. 610, 28 N. Y. Suppl.
1134.

facts alleged were in substance as follows: defendants who were officers and members of a local branch of the Knights of Labor in Rochester threatened plaintiff that if he refused to become a member they and their union would obtain his discharge from the employment in which he then was, and would make it impossible for him to obtain any employment in Rochester or elsewhere. On plaintiff's refusal to join, defendants made complaint to his employers and forced them to discharge him from their employ and by false and malicious reports in regard to him sought to bring him into ill repute with members of his trade and employers, and to prevent him from prosecuting his trade and earning a livelihood. The answer denied generally and specifically all the allegations of the complaint except those in respect of the organization and rules of the union, and as a second and separate answer set up the existence in Rochester of a Brewers' Association and an agreement between that association and the local branch of the Knights of Labor that all employes of the brewery companies belonging to the Ale Brewers Association "should be members of said local branch and that no employe should work for a longer period than four weeks without becoming a member." It was further alleged that plaintiff was retained in the employ of one of the associated brewery companies "for more than four weeks after he was notified of the provisions of said agreement requiring him to become a member of the local assembly;" that on plaintiff's refusal of defendants' request that he join, defendants notified plaintiff's employers that plaintiff after repeated requests, "had refused for more than four weeks to become a member of the local assembly" and that "defendants did so solely in pursuance of said agreement and in accordance with the terms thereof and without intent or purpose to injure in any way." Plaintiff demurred to the separate answer on the ground that it was insufficient in law on the face thereof. The special and general term of the Supreme Court sustained the demurrer. On appeal to the Court of Appeals the judgment of the general term was affirmed. *It was said that the contract if valid would have presented a defense, but the view was unanimously held that the contract was against public policy and void.* The reasoning of the court in support of its holding was as follows: "Public policy and the interests of society favor the utmost freedom in the citizen to pursue his lawful trade or calling, and if the purpose of an organization or combination of workmen be to ham-

per or restrict that freedom, and, through contracts or arrangements with employers, to coerce other workingmen to become members of the organization and to come under its rules and conditions, under the penalty of the loss of their position and of deprivation of employment, then that purpose seems clearly unlawful, and militates against the spirit of our government and the nature of our institutions. The effectuation of such a purpose would conflict with that principle of public policy which prohibits monopolies and exclusive privileges. It would tend to deprive the public of the service of men in useful employment and capacities. It would, to use the language of Mr. Justice Barrett in *People v Smith*, 5 N. Y. Cr. R., at page 513, 'impoverish and crush a citizen for no reason connected in the slightest degree with the advancement of wages or the maintenance of the rate.' " "It was also said that 'while such contract was entered into for the purpose of avoiding disputes between the union and the association of employers, that feature and such an intention could not legalize a plan of compelling workmen not in affiliation with the union to join it at the peril of being deprived of their employment and of the means of making a livelihood.' "

§ 154. — —**Jacobs v Cohen.**

In *Jacobs v Cohen* decided Nov. 28, 1905,^{*} and which reverses a decision of the appellate division of the Supreme Court,^o the complaint allege that defendants, a firm of tailors, entered into an agreement with plaintiff, a local branch of the Coat Tailors' and Pressers' Union, binding itself not to employ any help whatsoever other than those belonging to such union and to "cease to employ any one and all those employes who are not in good standing and who do not conform to and comply with the rules and regulations "of the union, and declared on a note given as collateral security to be applied as liquidated damages for violation by defendants of any of the covenants of the agreement. The answer alleged that the contract was in restraint of trade and had "for its purpose the combination of employers and employes whereby the freedom of the citizen in pursuing his lawful trade and calling, is through such contracts * * * hampered and restricted, and has also for its purpose the coercing of workingmen to become members of the said

^{*} 183 N. Y. 207, 76 N. E. 5, 111 292.
Am. St. Rep. 730, 2 L. R. A. N. S. ^o See 99 App. Div. 481.

employe's organization and come under its rules and its conditions under the penalty of the loss of their positions and of deprivation of employment and that such purposes are in restraint of trade, and that they hamper and restrict the freedom of a citizen in pursuing his lawful trade and calling, and that they are against public policy and void." Plaintiff demurred to this defense as insufficient in law. The appellate division of the Supreme Court reversed an interlocutory decision of the Special term of that court sustaining the demurrer,¹⁰ *basing the decision on the ground that the case was ruled by Curran v Galen, Supra*, and characterized the agreement as "one the purpose of which is to hamper and restrict freedom of employment on the part of both the master and the servant under penalty of both loss of service, and deprivation of employment, and to coerce all workmen within the field of its operation to become and to remain members of the contracting organization."¹¹ But on appeal to the Court of Appeals, the judgment of the Appellate Division was reversed by a divided court and the contract held to be consonant with public policy and valid. It is to be observed that practically the only distinction between the contract in this case and that in *Curran v Galen supra* is that this contract is between a union and a *single employer*, while that in *Curran v Galen* is between a union and an *association of employers* carrying on the same line of business in a single community. In support of the conclusion reached in *Jacobs v Cohen*, considerable stress is placed on this distinction. In respect of the contract it was said: "If it might operate to prevent some persons from being employed by the firm or possibly from remaining in the firm's employ, this is but an incidental feature." * * * "Its restrictions were not of an oppressive nature operating generally in the community to prevent such craftsmen from obtaining any employment and from earning their livelihood," and a combination of workmen is lawful "when it does not extend so far as to inflict injury upon others, or to oppress and crush them by excluding them from all employment unless gained through joining the labor organization or trades' union." Inasmuch as it is said in this case (152 N. Y. pp. 212, 213) that *Curran v Galen supra* "*stands unaffected as authority*" the cor-

rectness of the decision in *Jacobs v Cohen* must depend solely on

¹⁰ See 99 App. Div. 481.

¹¹ See 99 App. Div. at page 486.

the distinction between the two contracts herein pointed out. As shown by the matter quoted from the opinion in *Jacobs v Cohen*, the court seems to ground its decision at least in part on this distinction, but goes further and says that *Curran v Galen* "presented a very different state of facts," and in confirmation of this statement sets out in substance the allegations of the complaint in that case which as already shown, in addition to alleging that defendants caused plaintiff's discharge also alleged that "by false and malicious reports circulated in regard to him, sought to bring him into ill-repute with members of his trade and employers and to prevent him from prosecuting his trade, and earning a livelihood." This, however, seems to be in a measure at least, an attempt to shift the grounds of the decision in *Curran v Galen*. Now it is obvious that no contract could justify the circulation of false and malicious reports to prevent one from prosecuting his trade, and that the court in *Curran v Galen* in no way considered this allegation of the complaint in that case is made evident by the statement in the beginning of its opinion which was as follows: "In the decision of the question before us we have to consider whether the agreement upon which the defendants rely in defense of this action, and to justify their part in the dismissal of the plaintiff from his employment, was one which the law will regard with favor and uphold when compliance with its requirements is made a test of the individual's right to be employed. If such an agreement is lawful, then it must be conceded that the defendants are entitled to set it up as a defense to the action, forasmuch as they allege that what they did was in accordance with its terms": It is plain that what the court had in view and actually decided in *Curran v Galen* was that the contract was void and furnished no justification for procuring plaintiff's discharge from employment, and this construction is borne out by four separate reports of this decision (the official, the North Eastern, the American State Reports and the Lawyers' Reports Annotated), in each of which this construction was placed on the opinion by the reporter who prepared the headnotes, and also by the dissenting opinion of Judge Vann in *Jacobs v Cohen*. Pains have been taken to show the actual grounds of the decision in *Curran v Galen*, because of what appears to be an obvious misconstruction of its effect in *Jacobs v Cohen*, and also in other decisions of the New

York Courts.¹² In *Jacobs v Cohen*, Judge Vann (with whom Judge Bartlett concurred) wrote an elaborate opinion in which he dissented from the majority opinion for the following reasons: The case he said was quite analogous to *Curran v Galen*. "The manifest purpose of the contract was to prevent competition and create a monopoly of labor. A combination of capital, or labor, or as in this case of both, to prevent the free pursuit of any lawful business, trade, or occupation, is forbidden both by the statute and the common law. A labor trust in restraint of free labor is opposed to sound public policy the same as a trust of capital in restraint of free production and any agreement by which either object is sought to be accomplished is illegal and void. The contract in question was a combination in the interest of monopoly to prevent the employment as well as to compel the discharge of competent men who were willing to work. Its primary object was to create a monopoly to benefit the members of a single labor union, by compelling the discharge of good men who wished to work, but were too independent to join the union under compulsion, or, if they were members already, by compelling them to remain such against their will. * * * The agreement created an unlawful combination or trust, because it monopolized the market by excluding from employment all who do not belong to this one union, and compelled the discharge of all in employment who would not join it. The means used was not persuasion, but coercion."

§ 155. — — **Mills v United States Printing Co.**

In *Mills v United States Printing Co.*,¹³ decided by the Appellate Division of the New York Supreme Court, Dec. 4th, 1904, the court upheld as valid a contract made in settlement of a strike by which the employer, a printing company bound itself to employ thereafter only men of the union to which the strikers belonged, the contract also providing that all in the employ of the company at the time the contract was made might be admitted to the union. In support of the holding the court said that it appeared from the clause affording

¹²See concurring opinion of Judge Gray in *Nat'l Protective Ass'n v Cumming*, 170 N. Y. 315, (at p. 334) 63 N. E. 369, 88 Am. St. Rep. 648, 58 L. R. A. 135; *Mills v United States Printing Co.*, 91 N. Y. Suppl. 185, 99

App. Div. 605 (at p. 614), in which Judge Gray's concurring opinion is quoted with approval.

¹³91 N. Y. Suppl. 185, 99 N. Y. App. Div. 605.

non-union men the privilege of admission (which the union was under no obligation to do) that the aim of the union was not the discharge of the non-union men as individuals or to drive them out that places might be made for union men,¹⁴ but to insure co-operation of all the employes, so as to act thenceforth in concert on questions of wages, work hours or the employment of only those to work with them who were approved by them as skilful and competent. This decision on the facts is squarely within the rule laid by *Jacobs v Cohen*, though the reasoning in support of it is somewhat different.

§ 156. — —Rules deducible from New York decisions.

Briefly stated the following are the rules deducible from the New York decisions: a contract between an association of all the employers of labor engaged in the same line of business in a single community by which it is agreed that the employes of the individuals composing the association, shall be exclusively members of the union, and that no employe shall work for a longer period than specified by the contract without becoming a member is against public policy and void.¹⁵ But a contract between an individual employer and a labor union, by which the employer binds himself to employ and to retain in his employ only workmen who are members of the union and only such members as are in good standing is not against public policy and is valid.¹⁶

¹⁴ It may be well to note here that if the purpose of a contract between a labor union and an employer of labor was to secure employment for members out of work by driving out non-union men and replacing them with union men out of work it would most probably be held valid by both the New York and other courts of last resort by which strikes for that purpose have been upheld as being within the principles of legitimate competition. (See *Supra* section 38). If a strike for that purpose is valid, it is hard to see why a contract entered into for the same purpose should not also be valid.

¹⁵ *Curran v Galen*, 152 N. Y. 33, 46 N. E. 297, 57 Am. St. Rep. 496, 37

L. R. A. 802. See also as sustaining this view *McCord v Thompson, Sterrett Co.*, 113 N. Y. Suppl. 385.

¹⁶ *Jacobs v Cohen*, 183 N. Y. 207, 76 N. E. 5, 111 Am. St. Rep. 730, 2 L. R. A. N. S. 292 (This decision is approved in *People v Marcus*, 185 N. Y. 257, 77 N. E. 1073, 113 Am. St. Rep. 902, 7 L. R. A. N. S. 282, in which it was said: "That freedom to contract which entitles an employer to make by agreement his place of business wholly within the control of a labor union, entitles him, if he so desires, to require of his employes that they be wholly independent of any labor union"); *Mills v United States Printing Co.*, 99 N. Y. App. Div. 605, 91 N. Y. Suppl. 185. See also as sus-

§ 157. —Decisions of other jurisdictions.

Berry v Donovan,¹⁷ decided by the Supreme Court of Massachusetts, June 20th, 1905, is the second case in point of time decided by a court of last resort, involving the validity of contracts of the character under consideration. The contract in this case, was between a shoemakers' union and a manufacturer of shoes, and among other things provided that the manufacturer should not retain in his employ any shoemaker *who was objectionable to the union from any cause* after receiving notice thereof from the union. Plaintiff having repeatedly refused to join the union, its representative under the provisions of the contract demanded and procured his discharge for this sole reason and plaintiff brought suit to recover the resulting damages. The court said: "The case of *Curran v Galen*, 152 N. Y. 33, in the decision of which the judges of the Court of Appeals were unanimous fully covers the present case. The principle involved in each of the two cases is the same and the language of the opinion of that case in its application to this, is decisive." In addition to the reasoning of *Curran v Galen* which the court adopted it was said that if such an object were treated as legitimate and allowed to be pursued to its complete accomplishment, every employe would be forced into membership in a union and the unions by a combination of those in different trades and occupations would have complete and absolute control of all the industries of the country. Employers would be forced to yield to their demands or give up business. The attainment of such an object in the struggle with employers would not be competition but monopoly. A monopoly controlling anything which the world must have is fatal to prosperity and progress. In matters of this kind the law does not tolerate monopolies. Nor could interference to compel a workman to join a union be justified as legitimate competition between workmen. Inducing a workman to join a union has no tendency to aid in such competition. On the contrary the object of organizations of this kind is not to make competition of employes with one another more easy or successful. It is rather, by association, to prevent such competition, to bring all to equality, and to make them act together in a common interest. It was also said that interference with one to compel him to join a un-

taining this view *McCord v Thompson-Starrett Co.*, 113 N. Y. Suppl. 385; *Simers v Halpern*, 114 N. Y. Suppl. 163.

¹⁷ 188 Mass. 353, 74 N. E. 603, 108 Am. St. Rep. 499, 5 L. R. A. N. S. 899.

ion is not justifiable as competition between employer and employe in the attempt of each class to obtain as large a share as possible of the income from their combined efforts in the industrial field. It is no legal objection to action whose direct effect is helpful to one of the parties in the struggle that it is also directly detrimental to the other. But when action is directed against the other primarily for the purpose of doing him harm and thus compel him to yield to the demand of the actor, and this action does not directly affect the property, or business or status of the actor, the case is different, even if the actor expects to derive a remote or indirect benefit from the act. The gain which a union may expect to derive from inducing others to join it, is not an improvement to be obtained directly in the conditions under which the men are working, but only added strength for such contests with employers as may arise in future. An object of this kind is too remote to be considered a benefit in business such as to justify the infliction of intentional injury upon a third person for the purpose of obtaining it.¹⁸ The conclusions reached were: 1st. That plaintiff's refusal to join the union furnished no justification for procuring his discharge. 2nd. That whatever the contracting parties might do if no one but themselves was concerned, the contract did not of itself justify interference with his employment by defendant. 3rd. That plaintiff was entitled to recover the resulting damages and that his right of recovery was not affected by the fact that he had no contract of employment for a definite time. In *National Fireproofing Co. v Mason Builders' Association*,¹⁹ decided April 4th, 1906, the substance of the contract was as follows: An association of mason builders agreed with a union of bricklayers, that such association would take contracts for mason work *only where such contracts included the installation of fireproofing*; that they would not sublet the same, but would use their own employes for such installation, and by the agreement the members of the union bound themselves to work only for those who complied therewith. The purpose of the contract was to give to members of the union, all of the work pertaining to bricklaying in buildings where they were employed, not only work on walls where they were exposed to the inclemencies of the weather and danger attached

¹⁸ *Berry v Donovan*, 188 Mass. 353, 1011, 79 Am. St. Rep. 330, 51 L. R. 74 N. E. 603, 108 Am. St. Rep. 499, A. 339.
¹⁹ 145 Fed. 266.
 5 L. R. A. N. S. 899. And see *Plant v Woods*, 176 Mass. 492, 57 N. E.

to such work, but also the easier and protected work of installing fireproof blocks, which was strictly bricklayers' work, and to work continuously and make substantially full time, which they could not do when working upon the walls. The complainant was a contractor, whose business was confined to one branch of mason work, the installation of fireproofing, and he sought an injunction on the ground that the effect of the agreement was to ruin his business in New York City because when he made contracts to install his system the bricklayers' unions have obliged the bricklayers employed by complainant to strike and that therefore not only is the general contractor prohibited from contracting with him, but also an owner desiring to construct a building is precluded from contracting with him. The court held that inasmuch as the contract was made for the purpose of permitting the bricklayers to do all the brick-work on buildings, so that having done the outside work exposed to the inclemencies of the weather they might also do the inside and protected work and obtain full and better wages, there was nothing unlawful in it. By the construction placed on this contract, it has for its purpose the securing of employment for its members, instead of the coercion of outsiders into joining the union, and the decision is sustained by decisions of several states holding strikes or threats of strikes to procure the discharge of or refusal of employment to persons not belonging to the union justifiable as legitimate competition where the purpose is to secure employment of members of the union, to the exclusion of those who do not belong to it.²⁰ On appeal from this decision to the Circuit Court of Appeals the decision in this case was affirmed (on March 9th, 1909), and the validity of the contract upheld. It was urged that the contract was in violation of a statute providing that every contract, whereby a monopoly in the manufacture, production, or sale of any article or commodity of common use is or may be created, established or maintained is against public policy and void. The court, however, did not so consider it, and said: "The thing which is essential to the existence of a monopoly—the concentration of business in the hands of a few—is not present here. The business of installing fireproofing in the city of New York is open to all who choose to engage in it under existing economic conditions.

²⁰ See *Supra* Chapter IV, *Strikes*, Section 38, and especially the decision of *Pickett v Walsh*, therein cited

which is strikingly similar to the case under consideration.

General contractors cannot be said to have a monopoly when every person can be a general contractor. Members of the union cannot be said to have a monopoly where any qualified bricklayer can join a union.”²¹ It was further held not a conspiracy within a statute making it an offense for two or more persons to conspire to prevent another from exercising a lawful trade or calling, or doing any other lawful act, by force, threats, intimidation, or by interfering or threatening to interfere with tools, implements, or property belonging to or used by another, or with the use of implements thereof.” “The test of the application of the statute,” it was said, “is the purpose of the combination, and if the object and means be lawful, there is no conspiracy though a third person be incidentally injured.”²² In Illinois, as is shown by language used in decisions where the question was not directly involved, it is probable that contracts of the character under discussion would be held invalid.²³ In two other decisions the question of the validity of contracts of the kind under consideration was to some extent considered but no adjudication made in respect of their validity. Thus in *Brennan v United Hatters of North America*, a decision of the Court of Errors and Appeals of New Jersey decided Nov. 19, 1906,²⁴ it was said that the lawfulness of an agreement between a union with the manufacturing hatters in all the factories throughout an extensive district, to the effect that none but members of the association should be employed in their shops, admitted of question; but no adjudication in respect thereof was made because it was not necessary to a decision of the case. The substance of the decision in *Curran v Galen and Jacobs v Cohen*, is stated and it is said: “Whether these decisions are consistent with each other is a question that may require consideration at a future time.” In *Birmingham Paint and Roofing Co. v Crampton*,²⁵ decided June 30th, 1905, a plea in an action of contract, set up as a defense that plaintiff breached the contract in failing to have the work contracted for performed by union labor, and the court overruled a demurrer thereto based on the ground that the contract was void as against public policy. The

²¹ *Nat'l Fireproofing Co. v Mason Builders' Ass'n*, 169 Fed. 259, 270.

²² *Nat'l Fireproofing Co. v Mason Builders' Ass'n*, 169 Fed. 259, 264.

²³ See *Infra* this chapter, Section

159, and *Supra* Chapter *Strikes*, Section 35.

²⁴ 73 N. J. L. 729, 65 Atl. 165, 118 Am. St. Rep. 727, 9 L. R. A. N. S. 254.

²⁵ (Ala.) 39 So. 1020.

basis of the court's ruling was that so far as the facts in the plea go, it does not appear that the laborers referred to are not a class preferable on account of superior skill than others and for which the parties had a legal right to contract that the work should be done. In this state of the pleadings, the court said that the question as to whether or not the contract is void on the ground of public policy is not presented.

§ 158. Contracts for public work requiring union labor exclusively.—Statement of rule.

Whatever may be the status of contracts between employers of labor engaged in a private enterprise, and labor unions providing for the employment of members of the union to the exclusion of all other workmen,²⁶ there is no question that a contract by a municipal corporation for public work or a municipal ordinance or resolution requiring the party undertaking the performance of such work to use only union labor is void,²⁷ and the rule is the same whether there is a statute requiring competitive bidding,²⁸ or not, the general rule being well settled that all contracts in which the public are interested which tend to prevent competition, when a statute or known rule of law requires competition are void.²⁹ In selecting or ascertaining the lowest responsible bidder, those representing the municipality may take into consideration the comparative ability and qualification of the several bidders for the proposed work, and the lowest price is not in every instance a controlling factor. But this rule presupposes that all bidders are given an equal opportunity, and that there is applied to them no arbitrary classification

²⁶ See *Supra* this chapter, Sections 152-157 inclusive.

²⁷ *Illinois*.—*Adams v Brennan*, 177 Ill. 194, 52 N. E. 314, 42 L. R. A. 718, 69 Am. St. Rep. 222; *Holden v Alton*, 179 Ill. 318, 53 N. E. 556. *Fiske v People*, 188 Ill. 206, 58 N. E. 985, 52 L. R. A. 291.

Iowa.—*Miller v City of Des Moines*, 122 N. W. 226.

Michigan.—*Lewis v Detroit Board of Education*, 139 Mich. 306, 102 N. W. 756.

Montana.—*State v Toole*, 26 Mont.

22, 66 Pac. 496, 91 Am. St. Rep. 386.

Tennessee.—*Marshall & Bruce Co. v Nashville*, 109 Tenn. 495, 71 S. W. 815.

See also *Ingle v Mobile Board of Public Works*, 135 Ala. 187, 33 So. 678, 93 Am. St. Rep. 20, an analogous case which supports this doctrine.

²⁸ See cases cited in preceding note.

²⁹ *Fishbarn v Chicago*, 171 Ill. 338, 49 N. E. 532, 39 L. R. A. 482, 63 Am. St. Rep. 236, and authorities cited; *Atlanta v Stein*, 111 Ga. 789, 36 S. E. 932.

by which those of one class are to receive no consideration so long as a satisfactory bidder can be found in the other class. An award so made is not the result of the exercise of legal discretion. It is a manifest abuse of discretion.³⁰ The fact that the representatives of the municipality acted in good faith, influenced by the belief that in giving the contract to the lowest bidder they were in some way serving the best interests of the city, makes no difference, as the question involved is not one of good faith, but of power and jurisdiction.³¹

§ 159. Reasons on which rule is based.

Inasmuch as the decisions are in entire accord on this question no extended discussion is necessary, but a brief statement of the reasons on which the rule is based, with a few applications thereof will not be out of place. Private employers and officers acting in behalf of the public stand on a different footing,³² and while the individual may of he choose give away his money, the public officer acting as trustee has no such liberty and no right to surrender to any one, the rights of those for whom he acts.³³ Provisions of this character narrow the field for the employment of labor, restrict competition, and have the effect of increasing the cost of the work. This is directly opposed to the interest of the taxpayer who is entitled to have the work done at the lowest cost, and consequently is against public policy.³⁴ It is further said that these provisions are, in effect, an expenditure of public money for the benefit of a labor union,³⁵ and amount to an unconstitutional discrimination in favor of one class of citizens by excluding another class following

³⁰ *Miller v City of Des Moines*, (Iowa) 122 N. W. 226.

³¹ *Miller v City of Des Moines*, (Iowa) 122 N. W. 226.

³² *State v Toole*, 26 Mont. 22, 66 Pac. 496, 91 Am. St. Rep. 386.

³³ *Adams v Brennan*, 177 Ill. 194, 52 N. E. 314, 42 L. R. A. 718, 69 Am. St. Rep. 222.

³⁴ *Alabama*.—*Ingle v Mobile Board of Public Works*, 135 Ala. 187, 33 So. 678, 93 Am. St. Rep. 20.

Georgia.—*Atlanta v Stein*, 111 Ga. 789, 36 S. E. 932.

Illinois.—*Adams v Brennan*, 177 Ill. 194, 52 N. E. 314, 42 L. R. A. 718, 69 Am. St. Rep. 222; *Fiske v People*, 188 Ill. 206, 58 N. E. 985, 52 L. R. A. 291; *Holden v Alton*, 179 Ill. 318, 53 N. E. 556.

Michigan.—*Lewis v Detroit Board of Education*, 139 Mich. 306, 102 N. W. 756.

Tennessee.—*Marshall & Bruce Co. v Nashville*, 109 Tenn. 495, 71 S. W. 815.

³⁵ *Adams v Brennan*, 177 Ill. 194, 52 N. E. 314, 42 L. R. A. 718, 69 Am. St. Rep. 222.

lawful trades and occupations from the right to labor.³⁶ Liberty as guaranteed by the fourteenth amendment to the Constitution of the United States includes the right to contract as others may, and to take that right away from the class of persons following lawful pursuits is simply depriving such persons of a time-honored right which the constitution undertakes to secure to every citizen.³⁷ To obtain the benefit of the constitutional guarantee, and stand on an equal footing with union men in the contest of existence it is not incumbent on the non-union citizen to join the ranks of the union, and a contention, that he is not deprived of the opportunity to work except by his own act in refusing to do so is without force and entitled to no consideration.³⁸

§ 160. Application of rule.

The following cases will serve to show the application which has been made of the rule under consideration. In *Atlanta v Stein*,³⁹ it appeared that the charter of Atlanta did not require the public printing to be let to the lowest responsible bidder, but left to the municipal authorities a wide discretion. An ordinance was passed requiring all printing used by the city to bear the union label, and directing all advertisements soliciting bids to so state. Printing was advertised for, it being stated that no bids could be accepted for printing which could not bear the union label. There were four union and fifteen non-union printing establishments in Atlanta at that time. The non-union men were not allowed to bid, and evidence was introduced to show that they could have bid less than the lowest union bid. The work was awarded to a union establishment. On a bill, by a citizen and taxpayer, the execution of the contract was enjoined. In *Adams v Brennan*,⁴⁰ it appeared that the board of education in Chicago entered into an agreement with a workingmen's union, known as the Building Trades' Council," to the effect

³⁶ *Adams v Brennan*, 177 Ill. 194, 52 N. E. 314, 42 L. R. A. 718, 69 Am. St. Rep. 222; *Fiske v People*, 188 Ill. 206, 58 N. E. 985, 52 L. R. A. 291; *Lewis v Detroit Board of Education*, 139 Mich. 306, 102 N. W. 756; *Marshall & Bruce Co. v Nashville*, 109 Tenn. 495, 71 S. W. 815.

³⁷ *Marshall & Bruce Co. v Nashville*, 109 Tenn. 495, 71 S. W. 815 (quoting

State v Loomis, 115 Mo. 307, 22 S. W. 350, 21 L. R. A. 789).

³⁸ *Marshall & Bruce Co. v Nashville*, 109 Tenn. 495, 71 S. W. 815 (quoting *State v Loomis*, 115 Mo. 307, 22 S. W. 350, 21 L. R. A. 789).

³⁹ 111 Ga. 789, 36 S. E. 832.

⁴⁰ 177 Ill. 194, 52 N. E. 314, 42 L. R. A. 718, 69 Am. St. Rep. 222.

that the board would insert in all contracts for work on school buildings a provision that union men only should be employed by contractors to work on such buildings. A school-house needing repair, the board advertised for bids; inserting in the advertisement a clause to the effect that none but union labor should be employed. Two bids were put in by a contractor, one for \$1,900, with the right to use either union or non-union labor, and the other for \$2,090, and use union labor only. The board accepted the higher or "union" bid, and on a bill filed by a taxpayer, against the bidder and the board to enjoin the execution of the contract, an injunction was granted although the work had been begun under the contract. In *Marshall & Bruce Co. v Nashville*,⁴¹ a bill was filed one purpose of which was to test the validity of the following ordinance: "Be it enacted that all city printing shall bear the union label of the Nashville Allied Trades' Council or the label enacted by the International Typographical Union." The charter of the city of Nashville requires that all goods and supplies furnished the city, over a certain amount must be let out at competitive biddings to the lowest responsible bidder. It was held the ordinance was void as being in conflict with the charter and as being class legislation, contrary to public policy, and to the constitution of the State because plainly discriminative in character.

⁴¹ 109 Tenn. 495, 71 S. W. 815.

CHAPTER XIII.

PICKETING.

- § 161. The objects which picketing is designed to effect and its definition or description.
- § 162. Picketing accompanied by force, violence or intimidation.—Statement of rule.
- § 163. Application of rule.
- § 164. Picketing accompanied by obstruction of premises picketed.
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- § 166. Picketing for the purpose of procuring breach of contract.
- § 167. Picketing in aid of unlawful strike.
- § 168. View that all picketing is unlawful.
- § 169. View that peaceful picketing is lawful.—In General.
- § 170. Lawfulness of picketing as affected by numbers.
- § 171. Picketing with consent of party against whom it is designed to operate.
- § 172. Picketing designed to induce customers or the general public not to bestow patronage.
- § 173. Purposes for which picketing permissible under English legislation.
- § 174. Protection by injunction of right of union to employ pickets in aid of strike.
- § 175. Liability of union for acts of pickets.

§ 161. The objects which picketing is designed to effect and its definition or description.

The usual objects sought to be accomplished by picketing are the procuring of workmen to quit the service or not to enter the service of the party against whom the picketing is designed to operate, or to procure his customers or the public to withhold their patronage from him. Because of the difference of opinion which exists as to whether any picketing, no matter how conducted is lawful, it is not feasible to formulate a definition that will meet all views. "The word 'picket,' it is said, is borrowed from the nomenclature of warfare and is strongly suggestive of a hostile attitude towards the individual or corporation against which a labor union has a grievance."⁴² Lexicographers have defined it as "A body of men belong-

⁴² Jones v E. Van Winkle Gin & Machine Works, 131 Ga. 336, 62 S. E. 236, 127 Am. St. Rep. 235; Christensen v Kellogg Switchboard & Supply Co. 110 Ill. App. 61. And see Otis Steel Co. v Iron Moulders' Union, 110

ing to a trade union sent to watch and annoy men working in a shop not belonging to a union, or against which a strike is in progress,"⁴³ and this definition has been quoted with approval in some cases in which it was said that the word originally had no such meaning; and that the definition is the result of what has been done under it, and the common application that has been made of it.⁴⁴ It has also been defined as "the establishment and maintenance of an organized espionage upon the works of the party against whom the operation is directed and upon those going to and from them."⁴⁵ Lawful picketing, within the views of the courts which hold that there may be lawful picketing, may properly be described as the stationing of men by a labor union in numbers not sufficient to intimidate by reason of numbers alone, in the vicinity of the works or place of business of one with whom the union has a trade dispute, or at other places where those working for or seeking employment from him must pass or are likely to pass, for the purpose of obtaining or conveying information, or to use peaceable argument and persuasion to induce such workmen to aid the union in the dispute by quitting his employment or by not entering his employment, or by the same means to induce his customers or the public to withhold their patronage from him.

§ 162. Picketing accompanied by force, violence or intimidation.—Statement of rule.

Before entering upon a discussion of questions as to which opinion is conflicting, that branch of the law on picketing which is well settled will be considered. Whatever difference of opinion may exist as to whether picketing in any of its phases is lawful, it is obvious that picketing accompanied by force, violence, threats, abusive and insulting language, or intimidation, apart from the mere number of the pickets stationed, designed to prevent workmen from continuing in, or accepting employment with the party against whom the

Fed. 698, 700, in which it was said that while picketing may not be an occasion of war, it certainly is an evidence that war exists, and the term is appropriately borrowed from the nomenclature of actual warfare.

⁴³ Century Dictionary; Webster's Dictionary.

⁴⁴ *Beck v Railway Teamsters' Protective Union*, 118 Mich. 497, 77 N. W. 13, 42 L. R. A. 407, 74 Am. St. Rep. 421; *Ideal Mfg. Co. v Ludwig*, 149 Mich. 133, 112 N. W. 723; *York Mfg. Co. v Oberdick*, 25 Pa. Co. Ct. 321, 336.

⁴⁵ *Otis Steel Co. v Local Union No. 4*, 110 Fed. 698.

acts are designed to operate is unlawful. A combination to do these acts is a criminal conspiracy and indictable as such.⁴⁶ And the doing or continuance of such acts will be enjoined where the remedy at law is inadequate,⁴⁷ even though the parties to the conspiracy are liable to a criminal prosecution,⁴⁸⁻⁴⁹ and though the workmen against whom the acts are directed are not bound by contract to enter into or continue in the employ of the party whose property

⁴⁶ *Reg. v Druitt*, 10 Cox C. C. 592; *State v Stockford*, 77 Conn. 227, 58 Atl. 769, 107 Am. St. Rep. 128. And see *People v Kostka*, 4 N. Y. Cr. Rep. 429; *Smith v Thomasson*, 16 Cox C. C. 740.

⁴⁷ *California*.—*Goldberg, Bowen & Co. v Stablemen's Union*, 149 Cal. 429, 86 Pac. 806, 107 Am. St. Rep. 144, 8 L. R. A. N. S. 460.

Georgia.—*Jones v E. Van Winkle Gin & Machine Works*, 131 Ga. 336, 62 S. E. 236, 127 Am. St. Rep. 235.

Illinois.—*Piano & Organ Workers' International Union of America v Piano & Organ Supply Co.*, 124 Ill. App. 353; *Christensen v Kellogg Switchboard & Supply Co.*, 110 Ill. App. 61; *Beaton v Tarrant*, 102 Ill. App. 124.

Indiana.—*Karges Furniture Co. v Amalgamated Woodworkers' Local Union*, 165 Ind. 421, 75 N. E. 877, 2 L. R. A. N. S. 788.

Michigan.—*Ideal Mfg. Co. v Wayne Circuit Judge*, 139 Mich. 92, 102 N. W. 372.

New Jersey.—*W. & A. Fletcher Co. v International Ass'n*, N. J. 55 Atl. 1077.

New York.—*New York Central Iron Works Co. v Brennan*, 105 N. Y. Suppl. 865; *Butterick Pub. Co. v Typographical Union*, 100 N. Y. Suppl. 292, 50 Misc. 1; *Mills v United States Printing Co.*, 91 N. Y. Suppl. 85, 99 App. Div. 605; *Herzog v Fitzgerald*, 77 N. Y. Suppl. 366, 74 App.

Div. 110; *Davis v Zimmerman*, 91 Hun. 486, 36 N. Y. Suppl. 303.

Ohio.—*Brown Mfg. Co. v Local Union No. 76*, 12 Ohio Dec. 753; *Eureka Foundry Co. v Lehker*, 13 Ohio Dec. N. P. 398; *Hoster Brewing Co. v Giblin*, 14 Ohio Dec. N. P. 305. *Contra*.—*Richard Boiler Co. v Benner*, 14 Ohio Dec. 357, holding that acts of the character under consideration are criminal offences, and that the criminal law affords adequate protection for the employer and the workmen.

Pennsylvania.—*O'Neil v Behanna*, 182 Pa. St. 236, 37 Atl. 843, 61 Am. St. Rep. 702, 38 L. R. A. 382; *Murdock v Walker*, 152 Pa. 595, 25 Atl. 492, 34 Am. St. Rep. 678; *Marietta Casting Co. v Thuma*, 28 Pa. Co. Ct. 48.

Wisconsin.—See *Badger Brass Mfg. Co. v Daly*, 137 Wis. 601, 119 N. W. 328.

United States.—*Goldfield Consolidated Mines Co. v Goldfield Miners' Union*, 159 Fed. 500; *Allis-Chalmers Co. Iron Moulders' Union*, 150 Fed. 155; *Atchison, etc. R. Co. v Gee*, 139 Fed. 582; *Union Pac. R. Co. v Ruef*, 120 Fed. 102; *Allis-Chalmers Co. v Reliable Lodge*, 111 Fed. 264; *Otis Steel Co. v Iron Moulders' Union*, 110 Fed. 698. And see *Jordahl v Hayda*, 1 Cal. App. 696, 82 Pac. 1079.

⁴⁸⁻⁴⁹ *Vegelahn v Guntner*, 167 Mass. 92, 44 N. E. 1077, 57 Am. St. Rep. 443, 35 L. R. A. 722.

is picketed.⁵⁰ Picketing accompanied by any one of the acts under consideration is unlawful. The use of force and violence is not necessary to make picketing unlawful. Intimidation is not limited to threats of violence or to physical injury to person or property. It has a broader signification, and there may also be a moral intimidation which is illegal.⁵¹ In the guise of picketing strikers may obstruct and annoy others and by insult and menacing attitude intimidate them as effectually as by physical assault.⁵² Even a simple "request" to do or not to do a thing, made by one or more of a body of strikers under circumstances calculated to convey a threatening intimation, with a design to hinder or obstruct workmen, is unlawful intimidation, and not less obnoxious than the use of physical force for the same purpose.⁵³ The fact that pickets are serving under appointment and instructions from their union adds nothing to their rights and privileges as affecting third persons.⁵⁴ Such acts are a violation of the rights not only of the owner of the property picketed but also of those who wish to continue in or to enter into his employment⁵⁵—rights which are just as important and as fully protected by the Constitution, as those on whose behalf those acts are committed.⁵⁶ The owner of a business is entitled to have workmen come to and leave his place of business without being subjected to violence or threats of violence. But this is not the extent of his rights. Any course of conduct upon the part of others which deprives or substantially affects the freedom of mind of such workmen in reaching a decision to remain in or enter into his employ, or the freedom of will in carrying this decision into execution is an unlawful interference with such owner's business.⁵⁷ Likewise workmen in employment or seeking employ-

⁵⁰ *Vegetahn v Guntner*, 167 Mass. 92, 44 N. E. 1077, 57 Am. St. Rep. 443, 35 L. R. A. 722.

⁵¹ *Vegetahn v Guntner*, 167 Mass. 92, 44 N. E. 1077; 57 Am. St. Rep. 443; 35 L. R. A. 722; *O'Neil v Behanna*, 182 Pa. St. 236, 37 Atl. 843, 61 Am. St. Rep. 702, 38 L. R. A. 382.

⁵² *Iron Moulders' Union v Allis-Chalmers Co.*, 166 Fed. 45, 20 L. R. A. N. S. 315.

⁵³ *Allis-Chalmers Co. v Iron Moulders' Union*, 150 Fed. 155.

⁵⁴ *Karges Furniture Co. v Amalgamated Woodworkers' Local Union*, 165 Ind. 421, 75 N. E. 877, 2 L. R. A. N. S. 788.

⁵⁵ *Vegetahn v Guntner*, 167 Mass. 92, 44 N. E. 1077, 57 Am. St. Rep. 443, 35 L. R. A. 722; *Eureka Foundry Co. v Lehker*, 13 Ohio Dec. N. P. 398; *Atchison R. Co. v Gee*, 139 Fed. 582.

⁵⁶ *Allis-Chalmers Co. v Iron Moulders' Union*, 150 Fed. 155.

⁵⁷ *Eureka Foundry Co. v Lehker*, 13 Ohio Dec. N. P. 398.

ment are entitled to an unobstructed access to the place where the work is to be done over the streets and highways by which it is to be approached,⁵⁸ without being subjected to molestation, threats, violence or insults of any kind,⁵⁹ and without being compelled against their will to listen to persuasion,⁶⁰ and this right is not at all affected by assumed peculiarities of the conditions attending the struggles of men in the economic conflicts between laborers and capitalists, nor by any considerations of public policy in respect to these conflicts.⁶¹ This freedom of access is not at all inconsistent with any right the strikers have, to use the same streets and highways for the lawful conduct and maintenance of their strike by intercepting any one going to work in their place, for the purpose of peaceful entreaty and argument against supplanting them.⁶²

§. 163. —Applications of rule .

Applying these principles, it has been held that, picketing consisting in keeping two men in front of a person's place of business to procure workmen not to continue in the employment or to accept employment, who at times went further than simple advice, not obtruded beyond the point where the other person was willing to listen, and used in connection with social pressure, threats of personal injury or unlawful harm, has under such circumstances elements of intimidation and will be enjoined, though there is no contract between such workmen and the person whose store is picketed,⁶³ and an injunction has been granted to restrain strikers from picketing the plant of their former employer and gathering in the streets in groups, or in front of his shops, and calling his employees scabs and other offensive names, and threatening them with personal

⁵⁸ *American Steel & Wire Co. v Wire Drawers', etc. Union*, 90 Fed. 608; *Union Pac. R. Co. v Ruef*, 120 Fed. 102.

⁵⁹ *Goldfield Consolidated Miners' Co. v Goldfield Miners' Union*, 159 Fed. 500.

⁶⁰ *Goldfield Consolidated Mines Co. v Goldfield Miners' Union*, 159 Fed. 500, in which it was said: "Pickets have no legal right to insist that any non-union man shall listen to their solicitations, if he is unwilling to do

so, no matter how peaceful and friendly such solicitations may be;" *Union Pac. R. Co. v Ruef*, 120 Fed. 102. And see *Pope Motor Car Co. v Keegan*, 150 Fed. 148.

⁶¹ *American Steel & Wire Co. v Wire Drawers', etc. Union*, 90 Fed. 608.

⁶² *American Steel & Wire Co. v Wire Drawers' etc. Union*, 90 Fed. 608.

⁶³ *Vegelahn v Guntner*, 167 Mass. 92, 44 N. E. 1077, 57 Am. St. Rep. 443, 35 L. R. A. 722.

injury.⁶⁴ In another case it appeared that defendants were members of a trade union of tailors. The workmen having at the instigation of the union struck for higher wages and the master having employed work people, men and women, not union members, defendants who were members of the managing committee of the union caused "pickets" to be stationed about the doors of such employers to note work people who went in and out, to deter them from continuing in such employment and to induce them to join the union. Insulting gestures and expressions were used by the pickets to the non-union men. The court held that this amounted to intimidation, molestation and obstruction within a statute making these acts an offense.⁶⁵

§ 164. Picketing accompanied by obstruction of premises picketed.

Picketing accompanied by the obstruction of access to the premises picketed by any physical means, is unlawful and may be enjoined.⁶⁶ Such obstruction does not however justify the employer in committing a breach of the peace by driving rapidly through the crowd to disperse it, in such a manner as endangers the lives and limbs of those in the way. It is the duty of officers of the law to compel such crowds to disperse, and the employer should demand protection from them instead of taking the law into his own hands.⁶⁷

§ 165. Going upon premises picketed.

Pickets have no right to go upon premises picketed for the purpose of interfering with customers and the continuance of such acts may be enjoined.⁶⁸

§ 166. Picketing for purpose of procuring breach of contract.

If the purpose of maintaining a picket is to procure workmen to break their contracts of employment, it will be unlawful though conducted in a peaceable manner.⁶⁹

⁶⁴ *Beaton v Tarrant*, 102 Ill. App. 124.

⁶⁵ *Reg. v Druitt*, 10 Cox C. C. 592.

⁶⁶ *Foster v Retail Clerks' International Protective Ass'n*, 78 N. Y. Suppl. 860, 39 Misc. 48. See also *Hoster Brewing Co. v Giblin*, 14 Ohio Dec. N. P. 305.

⁶⁷ *Hoster Brewing Co. v Giblin*, 14 Ohio Dec. N. P. 305.

⁶⁸ *Foster v Retail Clerks Protective Ass'n*, 78 N. Y. Suppl. 860, 39 Misc. 48.

⁶⁹ *W. & A. Fletcher Co. v International Ass'n of Machinists*, (N. J.) 55 Atl. 1077.

§ 167. Picketing in aid of unlawful strike.

Where the strike itself is for an unlawful purpose, as for instance to injure another's business without pecuniary benefit to the actors, any picketing, even though of a peaceable character to aid the strike by persuading workmen to quit work is unlawful.⁷⁰

§ 168. View that all picketing is unlawful.

Although, as will be subsequently shown, the weight of authority is to the contrary,⁷¹ there are a number of decisions which hold that all picketing is unlawful and will be enjoined.⁷² The view taken is that picketing is in itself an act of intimidation,⁷³ and an unwarrantable interference with free trade, and that it makes no difference in effect whether the pickets are stationed a few feet or a thousand feet away from the premises picketed.⁷⁴ In one case it was said, "The very fact of establishing a picket is evidence of an intention to annoy, embarrass, and intimidate whether physical violence is resorted to or not. There have been a few cases where it was held that picketing by a labor union, of a place of business is not necessarily unlawful if the pickets are peaceful and well behaved, but if the watching and besetting of workmen is carried to such a length as annoyance to them or their employer it becomes unlawful. But manifestly that is not a safe rule and furnishes no fixed standard

⁷⁰ *W. P. Davis Machinery Co. v Robinson*, 84 N. Y. Suppl. 837, 41 Misc. 329, and see *Reg. v Rowlands*, 5 Cox. C. C. 460, 17 Ad. & El. N. S. 671.

⁷¹ See *Infra* the sections immediately following.

⁷² *California*.—*Pierce v Stablemen's Union*, 103 Pac. 323.

Illinois.—*A. R. Barnes & Co. v Chicago Typographical Union*, 232 Ill. 424, 83 N. E. 940, 14 L. R. A. N. S. 1018.

Michigan.—*Beck v Railway Teamsters' Protective Union*, 118 Mich. 497, 77 N. W. 13, 42 L. R. A. 407, 74 Am. St. Rep. 44.

New Jersey.—*George Jonas Glass Co. v Glass Bottle Blowers' Ass'n*, 72 N. J. Eq. 653, 66 Atl. 593.

United States.—*Atchison, etc. R. Co. v Gee*, 139 Fed. 584.

See also *Franklin Union v People*, 220 Ill. 355, 77 N. E. 176, 110 Am. St. Rep. 248, 4 L. R. A. N. S. 1001; *Dayton Mfg. Co. v Metal Polishers' Union*, 11 Ohio Dec. 845.

⁷³ *A. R. Barnes & Co. v Chicago Typographical Union*, 232 Ill. 424, 83 N. E. 940, 14 L. R. A. N. S. 1018. And see *Atchison, etc. R. Co. v Gee*, 139 Fed. 582, 584, in which it was said that "There is and can be no such thing as peaceful picketing any more than there can be chaste vulgarity, or peaceful mobbing or lawful lynching."

⁷⁴ *Beck v Railway Teamsters' Protective Union*, 118 Mich. 497, 77 N. W. 13, 74 Am. St. Rep. 421, 42 L. R. A. 407.

of what is lawful. Any picket line must result in annoyance both to the employer and the workmen, no matter what is said or done, and to say that the court is to determine by the degree of annoyance whether it shall be stopped or not would furnish no guide, but leave the question to the individual notions or bias of the particular judge.”⁷⁵ So in another case it was said that a picket in its very nature, tends to accomplish, and is designed to accomplish, riots and disturbances of the peace. “It tends to, and is designed by physical intimidation to drive other men from seeking employment in the places vacated by the strikers. It tends, and is designed to drive business away from the boycotted place, not by the legitimate methods of persuasion, but by the illegitimate, means of physical intimidation and fear. Crowds naturally collect; disturbances of the peace are always imminent, and of frequent occurrence. Many peaceful citizens, men and women, are always deterred by physical trepidation from entering places of business so under a boycott patrol. It is idle to split hairs upon so plain a proposition, and to say that the picket may consist of nothing more than a single individual peaceably endeavoring by persuasion to prevent customers from entering the boycotted place. The plain facts are always at variance with such requirements of reason.”⁷⁶

§ 169. View that peaceful picketing is lawful.—In general.

Although as was shown, there are some decisions which hold that all picketing is unlawful,⁷⁷ and it has been said that from the very nature of things peaceful picketing is of rare occurrence,⁷⁸ and “very much of an illusion,”⁷⁹ yet the view taken by the majority of decisions and which is best supported by reason is that picketing if not conducted in such numbers as will of itself amount to intimidation,⁸⁰ and when confined to the seeking of information such as the number and names and places of residence of those at work or seeking work on the premises against which the strike is in operation and to the use of peaceful argument and entreaty for the purpose of procuring such workmen to support the strike by quitting work or

⁷⁵ *A. R. Barnes & Co. v Chicago Typographical Union*, 232 Ill. 424, 83 N. E. 940, 14 L. R. A. N. S. 1018.

⁷⁶ *Pierce v Stablemen's Union*, (Cal.) 103, Pac. 323.

⁷⁷ See the preceding section.

⁷⁸ *Goldfield Consolidated Mines Co. v Goldfield Miners' Union*, 159 Fed. 500.

⁷⁹ *Allis-Chalmers Co. v Iron Moulders' Union*, 150 Fed. 135, 172.

⁸⁰ See the following section.

by not accepting work is not unlawful and will furnish no ground for injunction,⁸¹ or an action at law for damages.⁸² And in a very instructive decision of the Missouri Supreme Court, it was held that one who engages in picket duty at a public street corner for the purpose of persuading others not to take the places of striking workmen, is strictly within his constitutional rights, where he does not behave in a disorderly manner, or obstruct the street or interfere with the rights of others, and a conviction of one engaged in such acts under a city ordinance, making it an offense to "lounge, stand,

⁸¹ *Georgia*.—*Jones v E. Van Winkle Gin & Machine Works*, 131 Ga. 336, 62 S. E. 236, 27 Am. St. Rep. 235.

Indiana.—*Karges Furniture Co. v Amalgamated Woodworkers' Union*, 165 Ind. 421, 75 N. E. 877, 2 L. R. A. N. S. 788.

New Jersey.—*Cumberland Glass Manufacturing Company v Glass Bottle Blowers' Ass'n*, 59 N. J. Eq. 49, 46 Atl. 208; *W. & A. Fletcher Co. v International Ass'n of Machinists*, 55 Atl. 1077, in which it was said that the proposition that workmen on strike cannot maintain pickets, although merely for the purpose of obtaining such information as can be procured by the use of the eyes and ears without violating the employer's right to the free enjoyment of a free labor market, and thereby causing him substantial and irreparable damage is untenable.

New York.—*Jones v Maher*, 116 N. Y. Suppl. 180, 62 Misc. 388; *Searle Mfg. Co. v Terry*, 106 N. Y. Suppl. 438, 56 Misc. 265; *Butterick Pub. Co. v Typographical Union*, 100 N. Y. Suppl. 292, 50 Misc. 1; *Sun Printing & Publishing Co. v Delaney*, 48 N. Y. App. Div. 523, 62 N. Y. Suppl. 750; *Levy v Rosenstein*, 66 N. Y. Suppl. 101 (affirmed in 67 N. Y. Suppl. 630, 56 App. Div. 618); *Foster v Retail Clerks' International Protective Association*, 78 N. Y. Suppl. 860, 39 Misc.

48; *Krebs v Rosenstein*, 66 N. Y. Suppl. 42 (affirmed in 67 N. Y. Suppl. 385); *Mills v United States Printing Co.*, 91 N. Y. Suppl. 185, 99 App. Div. 605; *Rogers v Evarts*, 17 N. Y. Suppl. 264.

Ohio.—*Brown Mfg. Co. v Local Union No. 6*, 12 Ohio Dec. N. P. 753; *Ricard Boiler & Engine Co. v Benner*, 14 Ohio Dec. N. P. 357; *Hoster Brewing Co. v Giblin*, 14 Ohio Dec. N. P. 305; *Standard Tube, etc. Co. v International Union*, 9 Ohio Dec. 692; *Eureka Foundry Co. v Lehker*, 13 Ohio Dec. N. P. 398.

Pennsylvania.—*Morris Run Coal Mining Co. v Guy*, 14 Pa. Dist. Rep. 600.

Virginia.—*Everett-Waddey Co. v Richmond Typographical Union*, 105 Va. 188, 53 S. E. 273, 5 L. R. A. N. S. 792.

United States.—*Goldfield Consolidated Mines Co. v Goldfield Miners' Union*, 159 Fed. 500; *Allis-Chalmers Co. v Iron Moulders' Union* 150 Fed. 155 (affirmed in 166 Fed. 45, 20 L. R. A. N. S. 315); *Pope Motor Car Co. v Keegan*, 150 Fed. 148.

And see *Christensen v Kellogg Switchboard & Supply Co.* 110 Ill. App. 61.

⁸² See *W. & A. Fletcher Co. v International Ass'n of Machinists*, (N. J.) 55 Atl. 1077.

or loaf around or about or at street corners'' was set aside on the ground that the ordinance was unconstitutional and invalid, as being an infringement of the right of personal liberty, and unreasonable and oppressive.⁸³ That the views set forth in this section are correct does not admit of doubt. Indeed it may readily be seen that the right almost universally conceded to striking workmen to use peaceable argument and persuasion to induce other workmen to aid them in their strike, might, and very probably would be most seriously hampered if the right of picketing were denied. "The right to persuade new men to quit or decline employment is of little worth unless the strikers may ascertain who are the men that their late employer has persuaded or is attempting to persuade to accept employment."⁸⁴ While it is true that in the guise of picketing strikers may obstruct and annoy the new men and by insult and menacing attitude intimidate them as effectually as by physical assault, yet it can always be determined from the evidence, whether the efforts of the pickets are limited to getting into communication with the new men for the purpose of presenting arguments and appeals to their free judgment.⁸⁵

§ 170. Lawfulness of picketing as affected by numbers.

While as already shown the weight of authority holds that picketing peaceably conducted for the purpose of obtaining information and using peaceable persuasion is lawful,⁸⁶ and a reasonable number of strikers or their sympathizers may at any one time, take part in picketing,⁸⁷ nevertheless the mere numbers of the pickets may in itself constitute intimidation.⁸⁸ Striking workmen or their sympa-

⁸³ *St. Louis v Gloner*, 210 Mo. 502, 109 S. W. 30, 124 Am. St. Rep. 750.

⁸⁴ *Iron Moulders' Union v Allis-Chalmers Co.*, 166 Fed. 45, 51, 20 L. R. A. N. S., 315.

⁸⁵ *Iron Moulders' Union v Allis-Chalmers Co.*, 166 Fed. 45, 20 L. R. A. N. S., 315.

⁸⁶ See the preceding section.

⁸⁷ *Searle Mfg. Co. v Terry*, 106 N. Y. Suppl. 438, 56 Misc. 265.

⁸⁸ *Georgia*.—*Jones v E. Van Winkle Gin & Machine Works*, 131 Ga. 336, 62 S. E. 236, 127 Am. St. Rep. 235.

Indiana.—*Karges v Amalgamated Woodworkers' Union*, 165 Ind. 421, 75 N. E. 877, 2 L. R. A. N. S. 788.

New York.—*Searle Mfg. Co. v Terry*, 106 N. Y. Suppl. 438, 56 Misc. 265; *Rogers v Evarts*, 17 N. Y. Suppl. 264.

Ohio.—*Hoster Brewing Co. v Giblin*, 14 Ohio Dec. N. P. 305; *Brown Mfg. Co. v Local Union No. 76*, 12 Ohio Dec. 753; *Standard Tube, etc. Co. v International Union*, 9 Ohio Dec. 692. And see *Brunsmann v Atherton*, 12 Ohio Dec. N. P. 547.

Pennsylvania.—*Cook v Dolan*, 19

thizers have not the right as pickets or otherwise to assemble about places where workmen employed or contemplating employment, have to pass, in such numbers as put such workmen in fear of bodily harm.⁹⁰ The mere fact that large numbers of pickets are so disposed is itself a show of force and an act of intimidation and will be enjoined.⁹⁰ The most reprehensible intimidation may exist not only without violence but without words or even the lifting of a finger.⁹¹ The question as to how many may be stationed as pickets without amounting to such a show of force as to constitute intimidation is one of some difficulty, yet the difficulty of applying a rule of law furnishes no reason for denying its existence. The term intimidation, it has been said, is a relative one.⁹² What might intimidate one person would have no effect on another because all are not alike strong and courageous; yet the strong and the weak, the brave and the timid are alike entitled to the protection of the law.⁹³ The stationing of one picket near the place of business picketed for purposes of obtaining information and to address arguments and persuasion to such as are willing to listen to him has been held not unlawful,⁹⁴ and very properly, as it could hardly be claimed that the

Pa. Co. Ct. 401, 6 Pa. Dist. 524. And see *York Mfg. Co. v Oberdick*, 25 Pa. Co. Ct. 321.

United States.—*Pope Motor Car Co. v Keegan*, 150 Fed. 148; *Allis-Chalmers Co. v Iron Moulders' Union*, 150 Fed. 155; *United States v Kane*, 23 Fed. 748.

⁹⁰ *Karges Furniture Co. v Amalgamated Woodworkers' Union*, 165 Ind. 421, 75 N. E. 877, 2 L. R. A. N. S. 788.

⁹¹ *Massachusetts*.—*Sherry v Perkins*, 147 Mass. 212, 17 N. E. 307, 9 Am. St. Rep. 689.

New York.—*Butterick Pub. Co. v Typographical Union*, 100 N. Y. Suppl. 292, 50 Misc. 1.

Ohio.—*Brown Mfg. Co. v Local Union No. 76*, 12 Ohio Dec. N. P. 753.

Pennsylvania.—*York Mfg. Co. v Oberdick*, 25 Pa. Co. Ct. 321.

United States.—*Goldfield Consolidated Mines Co. v Goldfield Miners' Un-*

ion, 159 Fed. 500; *Allis-Chalmers Co. v Iron Moulders' Union*, 150 Fed. 155; *Pope Motor Car Co. v Keegan*, 150 Fed. 148; *Mackall v Ratchford*, 82 Fed. 41; *American Steel & Wire Co. v Wire Drawers', etc. Union*, 90 Fed. 608.

⁹² *Goldfield Consolidated Mines Co. v Goldfield Miners' Union*, 159 Fed. 500; *Allis-Chalmers Co. v Iron Moulders' Union*, 150 Fed. 181.

⁹³ *Franklin Union v People*, 220 Ill. 355, 77 N. E. 176, 110 Am. St. Rep. 248, 4 L. R. A. N. S. 1001.

⁹⁴ *Franklin Union v People*, 220 Ill. 335, 77 N. E. 176, 110 Am. St. Rep. 248, 4 L. R. A. N. S. 1001; *Searle Mfg. Co. v Terry*, 106 N. Y. Suppl. 438, 56 Misc. 265; *American Steel & Wire Co. v Wire Drawers', etc. Union*, 90 Fed. 608.

⁹⁵ *Eureka Foundry Co. v Lehker*, 13 Ohio Dec. N. P. 398.

stationing of one man as a picket amounted to a display of force. It has also been held that the picketing or patrolling the streets and railroad property near complainant's factory by striking workmen without organization or leadership at no time exceeding six or eight in number, and at all times sober, quiet and orderly, and not doing or saying anything further than to inquire of laborers what they were going to do, and inform them that a strike was in progress at the factory, is not calculated to intimidate, coerce, or frighten away any man who desires to work regardless of the good opinion or wish of his fellow-workmen and that an injunction against such acts should be dissolved.⁹⁵ So it has been held that the placing of pickets in groups of from two to ten men at the entrances of a factory, who would walk with the employes and use peaceable persuasion to induce them to quit their employment was lawful.⁹⁶ On the other hand, the stationing of pickets in numbers of thirty to one hundred twice a day at a place where workmen have to pass, is in itself intimidation.⁹⁷ And it has been held that a picket consisting of a group of five men is too large, the court stating that when five men argue with one, that is a show of power as distinguished from persuasion; the sense of power takes hold of the five men while the other is oppressed by fear.⁹⁸ The stationing of not more than two men as pickets in any one place would, perhaps, be a safe rule to avoid transgression of the law against intimidation by reason of numbers alone. It is not easy to see why it should be objectionable in point of law for strikers to station two men of peaceable demeanor near the premises involved in the trade dispute, or at some point where workmen employed or seeking employment there would pass or be likely to pass, in order to obtain or convey information in regard to such workmen, or to use legitimate argument and persuasion to induce them to aid in the strike by quitting or refraining from accepting employment.

§ 171. Picketing with consent of party against whom it is designed to operate.

Where the owner of premises picketed offers in open court to furnish to the union to which the strikers belong the names of those

⁹⁵ *Standard Tube, etc. Co. v International Union*, 9 Ohio Dec. 692.

⁹⁶ *Ricard Boiler & Engine Co. v Benner*, 14 Ohio Dec. N. P. 375.

⁹⁷ *Goldfield Consolidated Mines Co. v Goldfield Miners' Union*, 159 Fed. 500.

⁹⁸ *Allis-Chalmers Co. v Iron Moulders' Union*, 150 Fed. 155.

working for him, and states that he has no objection to one picket addressing them in a peaceable manner, a temporary injunction restraining all picketing will be modified so as to permit an acceptance of this offer.⁹⁹

§172. Picketing designed to induce customers or the general public not to bestow patronage.

While the stationing of pickets in proximity to a man's place of business and the use of peaceable persuasion to induce customers and the general public not to give him their patronage has been held lawful,¹ it is well settled that picketing designed for this purpose, which is accompanied by force, violence, threats, intimidation, or false statements is both unlawful,² and criminal.³ Those who conspire to do such acts and participate in them are indictable for criminal conspiracy,⁴ and an injunction will be granted to prevent the continuance of such acts.⁵ Thus it has been held that picketing one's premises for the purpose of intercepting his customers and the distribution of circulars containing statements wholly false as to his relations with his employes, with the avowed intention of ruining his business, will be enjoined.⁶ A statute providing that no combination between two or more persons to do or procure to be done any act in contemplation or furtherance of any trade dispute between employers and employes shall be deemed criminal, nor shall those engaged therein be indictable or otherwise punishable for the crime of conspiracy, if such act committed by one person would not be punishable as a crime, nor shall any restraining order or injunction

⁹⁹ *Eureka Foundry Co. v Lehker*, 13 Ohio Dec. N. P. 398.

¹ *Foster v Retail Clerks' International Protective Ass'n*, 78 N. Y. Suppl. 860, 39 Misc. 48.

² *Goldberg, Bowen & Co. v Stablemen's Union*, 149 Cal. 429, 86 Pac. 806, 117 Am. St. Rep. 145, 8 L. R. A. N. S. 460; *Karges Furniture Co. v Amalgamated Woodworkers' Union*, 165 Ind. 421, 75 N. E. 877, 2 L. R. A. N. S. 788; *Beck v Railway Teamsters' Protective Union*, 118 Mich. 497, 77 N. W. 13, 74 Am. St. Rep. 421, 42 L. R. A. 407. See also *Jordahl v Hayda*, 1 Cal. App. 696, 82 Pac.

1079.

³ *State v Stockford*, 77 Conn. 227, 58 Atl. 769, 107 Am. St. Rep. 28; *People v Kostka*, 4 N. Y. Cr. Rep. 429.

⁴ *People v Kostka*, 4 N. Y. Cr. Rep. 429.

⁵ *Goldberg, Bowen & Co. v Stablemen's Union*, 149 Cal. 429, 86 Pac. 806, 117 Am. St. Rep. 145, 8 L. R. A. N. S. 460; *Mulholland v Waiters' Local Union*, 13 Ohio Dec. N. P. 500.

⁶ *Beck v Railway Teamsters' Protective Union*, 118 Mich. 497, 77 N. W. 13, 74 Am. St. Rep. 421, 42 L. R. A. 407.

be issued with relation thereto, provided nothing in the act shall be construed to authorize force or violence or threats thereof, does not prohibit an injunction against acts which have the effect of intimidating plaintiff's customers resulting in the withdrawal of their patronage.⁷ Even if the statute could be so construed it would, to that extent, be void because violative of plaintiff's constitutional right to acquire, possess, enjoy and protect property.⁸

§ 173. Purposes for which picketing permissible under English legislation.

Before the passage of the Conspiracy and Protection of Property Act of 1875, the law as to peaceful picketing seems to have been on practically the same footing as in the majority of American jurisdictions.⁹ By this statute, however, it was provided that every person who shall with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority watches or besets the house or other place where such person resides, or works, or carries on business, or happens to be, or the approach to such house or place, shall on conviction thereof by a court of summary jurisdiction, or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding twenty pounds, or be imprisoned for a term not exceeding three months, with or without hard labor. Attending at or near the house or place where a person resides or works, or carries on business, or happens to be, or the approach to such house or place, in order merely to obtain or communicate information shall not be deemed a watching or besetting within the meaning of this section.¹⁰ Under the provisions of this act it was held that picketing for the purpose of persuading or otherwise preventing others not to work for or to accept employment from an employer of labor, or for any purpose except to give or obtain information is unlawful.¹¹ To come within

⁷ *Goldberg, Bowen & Co. v Stablemen's Union*, 149 Cal. 429, 86 Pac. 806, 117 Am. St. Rep. 145, 8 L. R. A. N. S. 460.

⁸ *Goldberg, Bowen & Co. v. Stablemen's Union*, 149 Cal. 429, 86 Pac. 806, 117 Am. St. Rep. 145, 8 L. R. A. N. S. 460.

⁹ *Reg. v Druitt*, 10 Cox C. C. 592.

¹⁰ *Conspiracy and Protection of Property Act 1875*, (38 & 39 Vict. C. 86, § 7.)

¹¹ *Lyons v Wilkins*, (1896) 1 Ch. 811, 65 L. J. Ch. 601, 74 L. T. 358 (affirmed in [1899] 1 Ch. 255, 68 L. J. Ch. 146, 79 L. T. 709); *Charnock v Court*, (1899) 2 Ch. 35, 68 L. J. Ch. 550; *Walters v Green*, (1899) 2 Ch.

the prohibition of the statute it was held that the watching or besetting need not be any lengthened watching, but might be for a short time only;¹² and that the statute is not limited in its operation to places of business of employers, or to places habitually frequented by workmen. "Place" includes any place where a workman happens to be however casually. It is not limited to places *ejusdem generis* with places of business or residence, but includes public places, such as railway stations or landing stages.¹³ The statute, it was said, is designed for the protection of employers as well as workmen,¹⁴ and it was held that an injunction will lie at the instance of an employer to prevent picketing for the purpose of persuading or otherwise preventing persons from working for him, whether the picketing be put in operation at the works or place of business of the employer or at the homes of the workmen,¹⁵ or at railway stations or landing stages.¹⁶ Even aside from the provisions

696, 68 L. J. Ch. 730, 81 L. T. 151. *Contra.* Wood v Operative Printers Assistants' Society, 22 T. L. R. 327. In this case it appeared that defendants stationed pickets to watch plaintiff's printing works to induce plaintiff's workmen to join the union and then to determine their employment by proper notices, the object being to compel plaintiffs to become employers of union men and to abstain from employing non-union men. There was no evidence that the pickets asked the men to break their contracts. This was carried out without causing violence, or obstruction or otherwise a common law nuisance. It was held not an offense within Protection of Property Act 1875 Sub-div. 4, section 7, and that an action would not lie in respect thereof. This decision is contrary to the plain provisions of the statute.

¹² Charnock v Court, (1899) 2 Ch. 35, 68 L. J. Ch. 550.

¹³ Charnock v Court, (1899) 2 Ch. 35, 68 L. J. Ch. 550.

¹⁴ Lyons v Wilkins, (1899) 1 Ch. 255, 68 L. J. Ch. 146, 79 L. T. 709.

¹⁵ Lyons v Wilkins, (1896) 1 Ch. 811, 65 L. J. Ch. 601, 74 L. T. 358 (affirmed in [1899] 1 Ch. 255, 68 L. Ch. 146, 79 L. T. 709).

¹⁶ Charnock v Court, (1899) 2 Ch. 35, 68 L. J. Ch. 550. In this case, it appeared that during the pendency of a strike, two agents of a trade union attended a landing stage to await the arrival of a steamer containing workmen imported by the masters from Ireland to replace the men on strike, and on the arrival of the steamer informed the Irish workmen of the strike, and offered to pay their expenses if they would go elsewhere to work. It was held that the attendance at the landing stage was with a view to compel the masters to conduct their business in accordance with the requirements of the men and was not in order merely to communicate information; that it was a besetting or watching within subs 4 of s 7 of the Conspiracy and Protection of Property Act 1875 and an interlocutory injunction was granted against the officers of the union.

of the statute it was said that the watching or besetting therein prohibited is a nuisance at common law, which a court of equity will enjoin.¹⁷ And it was held that persons who conspire illegally to watch and beset a place with a view of persuading workmen not to work, or to cease working for a person may be sued for damages jointly in one action.¹⁸ A very recent statute however has greatly modified the law in respect of picketing, provided for by Section 7 of the "Conspiracy and Protection of Property Act." By this later statute, entitled an "Act to Provide for the regulation of Trade Unions and Trade Disputes." (Enacted Dec. 21, 1906),¹⁹ that part of Section 7, beginning with the words "attending at or near," and ending with the close of the section is repealed, and it is provided by Section 2 of the later statute that "it shall be lawful for one or more persons acting in their own behalf or on behalf of a trade union or an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business, or happens to be, if they so attend merely for the purpose of peaceably obtaining or communicating information, or of peacefully persuading any person to work or abstain from working. This statute might well be termed a codification of the law relating to peaceful picketing as laid down by a majority of the American Courts.

§ 174. Protection by injunction of right of union to employ pickets in aid of strike.

The right of a voluntary association, engaged in supporting a strike, but which is not conducting a business or trade of any kind to freedom in the labor market, so that the association can readily employ pickets and other agents in carrying on its industrial warfare, is not a proper subject of protection by means of an injunction. The association has no direct interest in the dispute and the only rights which a court of equity will protect by an injunction in a proper case, in a trade dispute between the employer and employes are the rights of the two parties *directly interested* in the conflict, the employers and the employes—the right of the one to employ, and the right of the other to be employed; the right of both to have a free labor market upon which the opportunity to make money and

¹⁷ Lyons v Wilkins, (1899) 1 Ch. 696, 68 L. J. Ch. 730, 81 L. T. 151.
255, 68 L. J. Ch. 146, 79 L. T. 709.

¹⁹ Law Reports Statutes 1906, 6 Edward VII, ch. 47.

make a living depend. Here the parties directly interested are the striking workmen on one side, and their former employer and others in combination with him on the other, whom the bill charges with interference with pickets by violence, intimidation, and other unlawful methods.²⁰

§ 175. Liability of union for acts of pickets.

Notwithstanding a union may counsel its pickets not to use violence or intimidation, or lawlessness of any kind, yet, if after knowledge of the commission of such acts by its pickets, it continues its supervision of the strike and accepts the benefits of such terrorism, it must be deemed a party to the conspiracy.²¹ And where for a long time the conduct of strikers and pickets towards complainant's workmen is openly and notoriously abusive, local unions to which the strikers and pickets belonged, who supported the strike by payment of strike benefits to the strikers, and who sustained the picketing by pecuniary support must be deemed to have aided and abetted in the unlawful conduct, and an injunction will run against such unions as well as the strikers and pickets to restrain the continuance of the unlawful acts.²²

²⁰ *Atkins v W. & A. Fletcher Co.*, 500; and see *Union Pac. R. Co. v Ruef*, 65 N. J. Eq. 658, 55 Atl. 1074. 120 Fed. 102.

²¹ *Goldfield Consolidated Mines Co. v Goldfield Miners' Union*, 159 Fed. 180, 62 Misc. 388. ²² *Jones v Maher*, 116 N. Y. Suppl.

CHAPTER XIV.

INTERFERENCE WITH OR OBSTRUCTION OF INTERSTATE COMMERCE.

- § 176. Introductory statement.
- § 177. Definition of terms used in connection with subjects discussed.
- § 178. Liability under the Anti-trust Act.—Provisions of the Act.
- § 179. Statute applicable to combinations of labor as well as capital.
- § 180. Combinations need not be illegal at common law.
- § 181. Injury to intra-state as well as interstate commerce as affecting liability.
- § 182. Actual physical obstruction of transportation not an element of liability.
- § 183. Action for damages.
- § 184. Injunctions.—Power of federal courts to issue.
- § 185. Who may maintain bill for injunction.
- § 186. Lawfulness of labor unions no ground to deny injunction.
- § 187. Cessation of acts before hearing as ground for refusing injunction.
- § 188. Criminality of acts no ground for denying injunction.
- § 189. Particular combinations held amenable to injunctive process.
- § 190. Against whom injunction or restraining order operative.
- § 191. Criminal liability.
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- § 194. Liability to injunctive process.
- § 195. Liability under Rev. Stat. U. S. § 5440.—Conspiracy to commit offense against the United States.
- § 196. Restraint by federal government under general powers conferred by Constitution and put into exercise by legislation.

§ 176. Introductory statement.

It is the purpose of this chapter to consider the liability, civil and criminal of combinations of workingmen or the officers of their unions for obstruction and restraint of interstate commerce. This will include a discussion of suits and prosecutions based on federal legislation popularly known as the "Anti-Trust Act" and the "Interstate Commerce Act," and on Rev. St. U. S. §5440 making it a punishable offense to conspire to commit an offense against the United States, and will also include a discussion of the restraint of such combinations by the federal government under general powers conferred by the Constitution and put into exercise by

legislation. In a famous case decided in the United States Supreme Court it was said: "It is curious to note the fact that in a large portion of the cases in respect to interstate commerce brought to this court the question presented was of the validity of state legislation in its bearing upon interstate commerce, and the uniform course of decision has been to declare that it is not within the competency of a state to legislate in such a manner as to obstruct interstate commerce. If a state, with its recognized powers of sovereignty, is impotent to obstruct interstate commerce, can it be that any mere voluntary association of individuals within the limits of that state has a power which the state itself does not possess?"²³ This statement is quoted in a subsequent decision of that court where it is said that "the question answers itself."²⁴

§. 177. Definition of terms used in connection with subjects discussed.

Trade is the exchange of commodities for other commodities or for money; the business of buying and selling; dealing by way of sale or exchange.²⁵ In its general sense it comprehends every species of exchange or dealing, but its chief use is "to denote the barter or purchase and sale of goods, wares, and merchandise, either by wholesale or retail."²⁶ "Commerce" is not synonymous with "trade" but has a broader meaning.²⁷ "It is a term of the largest import. It comprehends intercourse for the purpose of trade in any and all its forms including transportation, purchase, sale, and exchange of commodities, between the citizens of one country and the citizens of other countries and between the citizens of different

Cross References.

For right to strike in general, see *Supra* Chapter IV, STRIKES. For law relating to boycotts generally see *Supra* Chapters VII, IX, BOYCOTTS OF CAPITAL AND THE SUBSTANTIVE LAW RELATING THERETO, BOYCOTTS OF LABOR. For right of union to compel its members to strike or withhold patronage see *Supra* Chapter XI, EXERCISE BY UNION OF DISCIPLINARY MEASURES AGAINST ITS MEMBERS AS AFFECTING RIGHTS OF THIRD PERSONS.

For form of complaint based on Section 7 of the Sherman Anti-Trust

Act, to recover three-fold damages for violation of act by boycott, see *Appendix* form No. 11.

²³ *In Re Debs*, 158 U. S. 564, 15 Sup. Ct. 900, 39 L. ed. 1092.

²⁴ *Loewe v Lawler*, 208 U. S. 274, 28 Sup. Ct. 301, 52 L. ed. 488.

²⁵ *United States v Debs*, 64 Fed. 723.

²⁶ *United States v Cassidy*, 67 Fed. 727.

²⁷ *Gibbons v Ogden*, 9 Wheat (U. S.) 1, 6 L. ed. 23; *United States v Cassidy*, 67 Fed. 727; *United States v Debs*, 64 Fed. 723.

States.”²⁸ The agencies and subject matter of interstate commerce consist of anything which is designed to be transported for commercial purposes from one state to another, and is usually in transit, and any passenger who is actually engaged in any such interstate commercial transaction, and any car or carriage actually transporting or engaged in transporting such passenger or thing.²⁹ Pullman cars in use upon the roads are instrumentalities of commerce.³⁰

§ 178. Liability under the Anti-trust Act.—Provisions of the Act.

The provisions of the Sherman Anti-trust Act, entitled “An act to protect trade and commerce against unlawful restraints and monopolies,”³¹ in so far as they are pertinent to this discussion are here set out and are as follows: “Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.”

“Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize any part of the trade or commerce among the several states or with foreign nations, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.”

“The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the attorney general, to institute proceedings in equity to prevent

²⁸ *Commerce* 7 Cyc 412; *Welton v Missouri*, 91 U. S. 275, 23 L. ed 347; *Mobile v Kimball*, 102 U. S. 691, 702 26 L. ed. 238; *Gloucester Ferry Co. v Pennsylvania*, 114 U. S. 203, 5 Sup. Ct. 826; *United States v Cassidy*, 67 Fed. 727.

²⁹ *In Re Charge to Grand Jury*, 62 Fed. 828.

³⁰ *United States v Cassidy*, 67 Fed. 727; *United States v Debs*, 64 Fed. 763.

³¹ Act July 2nd, 1890, Sections 1, 2, 4, 7 (Stat. at L. 209).

and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violations shall be enjoined or otherwise prohibited." "When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises."

"Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared unlawful by this act may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover three-fold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee."

§ 179. —Statute applicable to combinations of labor as well as capital.

There has been some slight divergence of opinion as to the combinations or conspiracies which this act includes. In one of the first cases, in which the statute came before the courts for construction, it was held that in order to render a combination amenable to its provisions it must appear that it was in restraint of trade by engrossing or monopolizing or grasping the market; and that the statute has no application to a combination of workmen to restrain interstate commerce.³² None of the other lower federal courts, however, coincided in this view. While conceding that the primary object of the statute was, undoubtedly, to prevent the destruction of legitimate and healthy commerce by individuals, corporations, and trusts, grasping, engrossing, and monopolizing the markets for commodities, these courts held that its provisions are broad enough to reach a combination or conspiracy that would interrupt the transportation of such commodities and persons from one state to another, and that they apply with equal force whether the combination is of capital or labor.³³ The rule stated more broadly is

³² *United States v Patterson*, 55 Fed. 605.

³³ *United States v Workingmen's Amalgamated Council*, 54 Fed. 995, 26 L. R. A. 158, 4 Inters. Com. Rep. 831;

United States v Debs, 64 Fed. 724; *United States v Cassidy*, 67 Fed. 727; *United States v Elliott*, 64 Fed. 27; *Thomas v Cincinnati, etc. R. Co.*, 62 Fed. 803, 4 Inters. Com. Rep. 788;

that combinations are condemned, not only when they take the form of trusts, but in whatever form found if they be in restraint of trade.³⁴ The view taken by these decisions was approved in a very recent decision of the Supreme Court of the United States, in which it was held that the statute makes no distinction between classes, but makes illegal "every" contract, combination, or conspiracy in restraint of trade among the several States, and that the fact that the parties to the combination were laborers and not themselves engaged in interstate commerce does not render the statute inapplicable.³⁵ In support of this view the court said that "the records of Congress show that several efforts were made to exempt by legislation, organizations of farmers, and laborers from the operation of the Act, and that all these efforts failed, so that the Act remained as we have it before us,"³⁶ and quoted with approval the following extract from a lower court opinion: "The congressional debates show that the statute had its origin in the evils of massed capital; but when the Congress came to formulate the prohibition, which is the yardstick for measuring the plaintiff's right to the injunction, it explained it in these words: 'Every contract, or combination in the form of trust, or otherwise in restraint of trade or commerce among the several States or with foreign nations is hereby declared to be illegal.' The subject had so broadened in the minds of the legislators that the source of the evil was not regarded as material and the evil in its entirety is dealt with. They made the interdiction include combinations of labor as well as of capital; in fact all combinations in restraint of trade without reference to the

United States v Agler, 62 Fed. 824; United States v Elliott, 62 Fed. 801. See also Waterhouse v Comer, 55 Fed. 149.

³⁴ United States v Debs, 64 Fed. 724, 747, in which it was said: "That is the effect of the words 'or otherwise.' "(as used in section 1). It may be that those words should be deemed to include only forms of like character, —that is to say, some form of contract as distinguished from tort; but, if that be so, it only emphasizes and makes imperative the inference, which

otherwise it seems to me would be sufficiently clear, that the word "conspiracy" should be interpreted independently of the preceding words. It is hardly to be believed that the words 'or otherwise' were used simply for the purpose of giving fuller scope to the antecedent words 'contract' and 'combination' and then 'conspiracy' added merely for the same purpose."

³⁵ Loewe v Lawlor, 208 U. S. 274, 28 Sup. Ct. Rep. 301, 52 L. ed. 488.

³⁶ Loewe v Lawlor, 208 U. S. 274, 28 Sup. Ct. 301, 52 L. ed. 488.

character of the persons who entered into them.”³⁷ Even if the statutes under consideration attempted to exclude from their operation, combinations of workmen they would most probably be held unconstitutional as discriminating in favor of such combinations. It has been held that the Illinois anti-trust act containing a proviso “that in the mining, manufacture or production of articles of merchandise, the cost of which is mainly made up of wages, it shall not be lawful for persons, firms or corporations doing business in this state to enter into joint arrangements of any sort, the principal object or effect of which is to maintain or increase wages,” is unconstitutional, and void, as being an unlawful discrimination in favor of the persons sought to be exempted thereby,³⁸ and that the Nebraska anti-trust act which expressly excepts from its provisions all assemblies and associations of workmen is void, for the same reason. In this last decision it was said: ‘On one side, by this legislation, we have organized labor. Those men are not amenable to the statute. On the other side we have men who do not belong to organized labor,—farmers, merchants, professional men, laborers, as well as all others. They are amenable, and by this statute that is called “equal protection.” I do not believe it. * * * “Dozens of statutes have been held invalid by appellate courts which sought to make it invalid for one class of men to do one thing and lawful for other men, practically under the same circumstances, to do another, but like thing.”’³⁹

§ 180. —Combination need not be illegal at common law.

In order to bring a combination within the prohibition of the statute it is not necessary that it should be an unlawful restraint of trade at common law. The statute has a broader application than the prohibition of restraints of trade unlawful at common law.⁴⁰ The act prohibits any combination whatever to secure action which essentially obstructs the free flow of commerce between the states,

³⁷ United States v Workingmen's Amalgamated Council, 54 Fed. 994, 26 L. R. A. 158, 4 Inters. Com. Rep. 831.

³⁸ People v Butler St. Foundry, etc. Co. 201 Ill. 236, 66 N. E. 349.

³⁹ Niagara Fire Insurance Co. v Cornell, 62 Fed. 816, 825.

⁴⁰ Loewe v Lawlor, 208 U. S. 274, 28 Sup. Ct. 301, 52 L. ed. 488. And see

as sustaining this view, United States v Trans-Missouri Freight Ass'n, 166 U. S. 290, 41 L. ed. 1007, 17 Sup. Ct. Rep. 540;; United States v Joint Traffic Ass'n, 171 U. S. 505, 43 L. ed. 259, 19 Sup. Ct. Rep. 25; Northern Securities Co. v United States, 193 U. S. 197, 49 L. ed. 679, 24 Sup. Ct. Rep. 436.

or restricts, in that regard, the liberty of a trader to engage in business.⁴¹

§ 181. —Injury to intrastate as well as interstate commerce as affecting liability.

The fact that the restraint agreed on or executed by a combination of workmen may operate to destroy intrastate as well as interstate commerce does not take the combination out of the operation of the statute. Although some of the means, whereby the interstate traffic was to be destroyed were acts within a state and some of them were in themselves, as a part of their obvious purpose and effect beyond the scope of Federal authority, still the acts must be considered as a whole, and the plan is open to condemnation notwithstanding a negligible amount of intrastate business might be affected in carrying it out.⁴²

§ 182. —Actual physical obstruction of transportation not an element of liability.

If the purposes of a combination of workmen are to prevent any interstate transportation at all, the fact that the means operated at one end before physical transportation commenced, and at the other end after the physical transportation had ended is immaterial. Physical obstruction of transportation is not necessary to bring the combination within the prohibition of the statute.⁴³

§ 183. —Action for damages.⁴⁴

State courts have no jurisdiction of an action based on the Anti-trust Act, to recover treble damages provided for thereby. Jurisdiction of such actions is in the federal courts alone.⁴⁵ The first case to reach the Supreme Court, in which a recovery of damages against a labor combination under the provisions of this statute was sought was decided in 1908,⁴⁶ and the decision is one of the most important which has been rendered in recent times. Applying the principles

⁴¹ *Loewe v Lawlor*, 208 U. S. 274, 28 Sup. Ct. 301, 52 L. ed. 488.

⁴² *Loewe v Lawlor*, 208 U. S. 274, 28 Sup. Ct. 301, 52 L. ed. 488.

⁴³ *Loewe v Lawlor*, 208 U. S. 274, 28 Sup. Ct. 301, 52 L. ed. 488. See also *Montague & Co. v Lowry*, 193 U. S. 38, 48 L. ed. 608, 24 Sup. Ct. 307.

⁴⁴ For form of complaint based on section 7 of the Sherman Anti-trust Act, to recover three-fold damages for violation of act by boycott, see *Appendix* form No. 11.

⁴⁵ *Loewe v Lawlor*, 130 Fed. 563.

⁴⁶ *Loewe v Lawlor*, (*The Hat Cases*) 208 U. S. 274, 28 Sup. Ct. 301, 52 L. ed. 488, (reversing 148 Fed. 924).

stated in the preceding sections, the holding was in effect that where on refusal of a manufacturer to unionize his plant, members of several vast labor associations having local branches in every state where the manufacturer sells his goods, enter into a combination the purpose of which is to restrain and destroy trade and commerce between such manufacturer and customers in other states, and the means to be used to effect this purpose are coercion and threats to procure a strike of all his employes, and also threats to boycott such customers if they buy the manufacturer's goods, such combination is within the prohibition of section 1 of the act, and where such conspiracy is executed and results in damage to the manufacturer, he is by the terms of section 7 entitled to recover three times the amount of damage sustained.

§ 184. —Injunctions.—Power of federal courts to issue.

Under and by virtue of the provisions of the anti-trust act,⁴⁷ the federal circuit courts have jurisdiction to restrain interference with interstate commerce by injunction,⁴⁸ and may at any time make such restraining order as shall be deemed just.⁴⁹ The power of Congress to pass statutes of this character is undoubted. This, it may do, in the exercise of its constitutional jurisdiction of the whole subject of interstate commerce. It is as competent for Congress to provide a civil remedy for prevention as it is to provide for punishment in a criminal proceeding for the unlawful conspiracy entered upon or consummated.⁵⁰ The power conferred is not an unwarranted invasion of the right to trial by jury. The jurisdiction in equity though given in broad and general terms will be deemed to be limited so as not to extend to a case which is not of equitable cognizance.⁵¹

§ 185. — —Who may maintain bill for injunction.

A bill to enjoin a combination of workmen from a violation of the provisions of the act may, of course, be brought by the United States;⁵² but a person injured by a violation of the provisions

⁴⁷ Act July 2nd, 1890, Section 2.

⁴⁸ *United States v Debs*, 64 Fed. 724;
United States v Agler, 62 Fed. 824;
United States v Elliott, 64 Fed. 27.

⁴⁹ *United States v Elliott*, 64 Fed. 27.

⁵⁰ *United States v Elliott*, 64 Fed.

27. See also *United States v Debs*, 64 Fed. 724.

⁵¹ *United States v Debs*, 64 Fed. 724.

⁵² *United States v Elliott*, 62 Fed. 801 (affirmed in 64 Fed. 27); *United States v Debs*, 64 Fed. 124; *United States v Workingmen's Amalgamated*

thereof cannot sue for an injunction thereunder. The injunctive relief is available to the government only. An individual can only sue for three-fold damages.⁵³

§ 186. — —Lawfulness of labor unions no ground to deny injunction.

The fact that labor organizations made defendants to a bill seeking to enjoin them from the commission of acts resulting in an interruption of interstate commerce are in their origin and purposes innocent and lawful, constitutes no ground for denying the injunction, when the unlawfulness of their acts is established. Associations of men like individuals, no matter how worthy their general character may be, when charged with unlawful combinations which are proved cannot escape liability on the ground of their commendable general character.⁵⁴

§ 187. — —Cessation of acts before hearing as ground for refusing injunction.

The fact that violence and intimidation used for the purpose of preventing workingmen from continuing in or entering into employment and resulting in an interruption of interstate commerce has ceased and that labor has been resumed throughout all branches of business pending the filing of the bill and the hearing, is no ground for denying an injunction, and this is especially true where there has been no disclaimer of the right to do the acts complained of. The question as to the maintenance of a bill and the granting of relief to a complainant is to be determined by the status existing at the time of the filing of the bill.⁵⁵

§ 188. — —Criminality of acts no ground for denying injunction.

It is no ground to deny an injunction against acts in violation of the statute, that such acts are criminal. Where parties threaten to

Council, 54 Fed. 994, 26 L. R. A. 158, 4 Inters. Com. Rep. 831 (affirmed in 57 Fed. 85, 6 C. C. A. 258, 11 U. S. App. 426).

⁵³ National Fireproofing Co. v Mason Builders' Ass'n, 169 Fed. 259; Greer v Stoller, 77 Fed. 2; Southern Indiana Exp. Co. v United States Exp. Co. 88 Fed. 663; Gulf Coast, etc. R. Co. v Miami Steamship Co. 86 Fed. 407, 30 C. C. A. 142; Blindell v Hagen,

54 Fed. 40 (affirmed in 56 Fed. 696, 6 C. C. A. 86).

⁵⁴ United States v Workingmen's Amalgamated Council, 54 Fed. 994, 26 L. R. A. 158, 4 Inters. Com. Rep. 831.

⁵⁵ United States v Workingmen's Amalgamated Council, 54 Fed. 994, 26 L. R. A. 158, 4 Inters. Com. Rep. 831 (affirmed in 57 Fed. 85, 6 C. C. A. 258, 11 U. S. App. 426).

commit a criminal offense, which, if executed against private property, would destroy it, and occasion irreparable injury to the owner, and especially where such destruction would occasion a multiplicity of suits to redress the wrong if committed, courts of equity may interpose by injunction to restrain the threatened injury.⁵⁶

§ 189. — —Particular combinations held amenable to injunctive process.

Injunctions and restraining orders have frequently been granted against combinations of railroad employes and their officers, the purpose whereof was the tying up of lines of railroads and the restraint of commerce. In the celebrated Debs case which arose out of the great railroad strike of 1894,⁵⁷ a bill was filed by the United States against the officers of the American Railway Union, which alleged that a labor dispute existed between the Pullman Palace Car Company and its employees; that thereafter the four officers of the railway union combined together and with others to compel an adjustment of such dispute by creating a boycott against cars of the company; that, to make such boycott effective, they had already prevented certain of the railroads running out of Chicago from operating their trains; that they asserted that they could and would tie up, paralyze, and break down any and every railroad which did not accede to their demands, and that the purpose and intention of the combination was "to secure unto themselves the entire control of the interstate, industrial, and commercial business in which the population of the city of Chicago and the other communities along the lines of road of said railways are engaged with each other, and to restrain any and all other persons from any independent control or management of such interstate, industrial, or commercial enterprises, save according to the will and with the consent of the defendants." The circuit court awarded an injunction basing its decision principally on the Anti-trust Act. On appeal to the Supreme Court the action of the lower court in awarding the injunction was sustained on different grounds, but this court expressly disclaimed any dissent from the opinion of the lower court in reference to the scope of the act, merely preferring to base their decision on broader grounds.⁵⁸ Injunctions were also is-

⁵⁶ United States v Elliott, 62 Fed. 27. And see *Supra* Chapter VII, *Boycotts of Capital and The Substantive Law Relating Thereto*, Section 96.

⁵⁷ United States v Debs, 64 Fed. 723.

⁵⁸ See *In Re Debs*, 158 U. S. 564, 15 Sup. Ct. 900, 39 L. ed. 592.

sued in other cases arising out of the strike in question in which the facts charged varied somewhat from those alleged in the Debs Case. Thus in *United States v Elliott*,⁶⁰ it was held that a combination by the employes of several railroad companies to prevent them from conducting their customary business in transporting passengers and freight between and among the different States and foreign countries, and for that purpose to induce persons in the employ of the railroad companies to leave their service and to prevent them from securing the services of other persons in the place of those induced to quit, the object of the combination being to prevent them from hauling cars used extensively in the necessary transaction of their interstate commerce business was an unlawful conspiracy within the Act and that it would be enjoined on a bill by the United States alleging these facts. In *Thomas v Cincinnati, etc. R. Co.*,⁶¹ it was said that a combination of officers of unions of railway employes to incite the employes of all the railways in the country to suddenly quit their service without any dissatisfaction with the terms of their employment to paralyze utterly all the traffic by which the people live, and starve the railroad companies and the public into compelling a manufacturer of cars with whom the railway employes had no relations of any sort, to raise the wages of his employes was squarely within the prohibition of the Act. This being so, it of course follows that such a combination might be enjoined on a bill by the United States. And in *United States v Workingmen's Amalgamated Council*,⁶² a case arising out of another strike, but involving the same principles, it was held that, where, in order to compel the employment of non-union men only, members of a multitude of separate labor organizations form a vast combination to cause work in all departments of business to cease, and carry out the purpose of the combination by preventing laborers from working by violence and intimidation, thus interrupting the transportation of merchandise from state to state or foreign states, such combination comes within the statute, and that an injunction will be granted on a bill brought by the United States. Nevertheless, not all combinations among workingmen which may affect interstate commerce are

⁶⁰ 64 Fed. 27 (affirming 62 Fed. 801).

⁶¹ 62 Fed. 803, 4 Inters. Com. Rep. 788.

⁶² 54 Fed. 994, 26 L. R. A. 158, 4 Inters. Com. Rep. 831 (affirmed in 57 Fed. 85, 6 C. C. A. 258, 11 U. S. App. 426).

in violation of the act. Thus in *Hopkins v United States*,⁶² it was said that an agreement among themselves by locomotive engineers, firemen or trainmen in the service of an interstate railroad not to work for less than a certain named compensation would not be in violation of the act because the cost of transporting interstate freight would be enhanced thereby. "To treat as condemned by the act all agreements under which as a result, the cost of conducting an interstate commercial business may be increased would enlarge the application of the act far beyond the meaning of the language used. There must be some direct and immediate effect upon interstate commerce in order to come within the act."

§ 190. — Against whom injunction or restraining order operative.

An injunction to restrain violations of the act, against unknown defendants, is valid and binding upon them when the injunction order is served upon them although they are not made parties to the suit.⁶³ Nor is it an objection to a restraining order that it goes against parties not named in the bill or in the order, but upon all persons acting in concert with the conspirators named on whom the order was served.⁶⁴

§ 191. — Criminal liability.

A combination by members of a union, who by violence and intimidation prevent the passage of railroad trains engaged in transporting the interstate commerce of the country is punishable as a misdemeanor under the Anti-trust Act.⁶⁵ A combination of officers of unions composed of railway employees to incite all railway employees in the country to suddenly quit their service without any dissatisfaction with the terms of their own employment to paralyze utterly all the traffic by which the people live and starve the railroad companies and the public into compelling a manufacturer of cars with whom the railway employees had no relations of any sort, to raise the wages of his employees, is an unlawful conspiracy under the Anti-trust Act, rendering the conspirators liable to punishment

⁶² 171 U. S. 578, 593, 19 Sup. Ct. 40, 43 L. ed. 290.

⁶³ *United States v Agler*, 62 Fed. 824.

⁶⁴ *United States v Elliott*, 64 Fed. 27.

⁶⁵ *In Re Charge to Grand Jury*, 62 Fed. 840.

as for a misdemeanor.⁶⁶ Such is also the case where officers of a union vested with the power of calling strikes, enter into a combination to call a strike of the members in the employ of a railway company which strike will operate in restraint of interstate commerce, and to enforce their orders by effective penalties, where the purpose of the combination is not to advance the interests of the members, but to gratify personal ambition or malice.⁶⁷ But such officers would be guilty of no offense if they acted in good faith, in the interest of the members, though injury to interstate commerce incidentally results.⁶⁸ Nevertheless if injury to interstate commerce resulted from the exercise of such an agreement, the burden would rest on such officers to show that they had lawful authority to call strikes and that they acted in good faith.⁶⁹

§ 192. Liability under the Interstate Commerce Act.—Provisions of the Act.

The provisions of the Interstate Commerce Act so far as pertinent to this discussion are as follows: It shall be unlawful for any common carrier subject to the provisions of the act, "to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."⁷⁰ "In case any common carrier subject to the provisions of this act shall do, cause to be done, or permit to be done, any act, matter, or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter or thing in this act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with reasonable counsel or attorney's fees to be fixed by the court in every case of recovery, which attorneys' fee shall be taxed and collected as part of the costs in the case."⁷¹ "Any common carrier subject to

⁶⁶ See *Thomas v Cincinnati, etc. R. Co.* 62 Fed. 803, 4 Inters. Com. Rep. 788.

⁶⁷ See *In Re Charge to Grand Jury*, 62 Fed. 828.

⁶⁸ See *In Re Charge to Grand Jury*, 62 Fed. 828.

⁶⁹ *In Re Charge to Grand Jury*, 62 Fed. 828.

⁷⁰ Act Feb. 4th, 1887, Section 3.

⁷¹ Act Feb. 4, 1887, section 8.

the provisions of this act, or, when such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, or lessee, agent, or person acting for or employed by such corporation, who alone or with any other corporation, company, person, or party * * * shall wilfully omit or fail to do any act, matter, or thing in this respect required to be done, or shall aid or abet such omission or failure * * * shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not exceeding \$5,000.”⁷²

§ 193. —Liability for damages.

Where railroad companies and their employes enter into a combination to refuse to receive and handle freight of another railroad company against whom a boycott has been declared by labor unions to which such employes belong, and acts are done in furtherance of the combination by which the latter company is injured, all the members of the combination are under section 8 of the Interstate Commerce Act, liable for the resulting damages.⁷³

§ 194. —Liability to injunctive process.

Suits brought to enjoin acts in violation of this statute are within the jurisdiction of the federal courts because they involve the construction of an act of Congress.⁷⁴ Jurisdiction is not dependent upon the citizenship of the parties.⁷⁵ Section 3 makes it mandatory upon connecting railroads to receive and deliver passengers and freight, and to afford equal facilities for the interchange of traffic. Inasmuch as corporations can act only through their officers, agents, servants, the mandatory provisions of the law which apply to the corporation apply with equal force to its officers and employes.⁷⁶ In

⁷² Section as amended 25 St. at Large, p. 855.

⁷³ Toledo, etc. R. Co. v Pennsylvania Co., 54 Fed. 730, 19 L. R. A. 387, 5 Inters. Com. Rep. 522.

⁷⁴ Toledo, etc. R. Co. v Pennsylvania Co., 54 Fed. 746, 19 L. R. A. 387, 4 Inters. Com. Rep. 522; Osborne v Bank, 9 Wheat, (U. S.) 738, 6 L. ed. 204. And see Knudsen v Benn, 123 Fed. 637, in which it was held: “As Congress has exclusive jurisdiction

over commerce among the states and with foreign countries, it is therefore the duty of the federal courts to safeguard the exercise of interstate commerce and to see that it has protection under the law.”

⁷⁵ Toledo, etc. R. Co. v Pennsylvania Co., 54 Fed. 730, 19 L. R. A. 387, 5 Inters. Com. Rep. 522.

⁷⁶ Toledo, etc. R. Co. v Pennsylvania Co., 54 Fed. 746.

construing this statute in relation to acts arising out of labor disputes it has been held that a combination of railroad companies and their employes to refuse to receive and handle interstate freight of another road against which a boycott has been declared by labor unions to which such employes belong, is in violation of section 3 and that a mandatory injunction will be granted to compel them to receive and handle the freight of such road on a bill filed by the company operating it. On these facts, it was said, the duty which the complainant sought to have enforced is defined by law, the rights of the parties free from doubt and the case urgent.⁷⁷ And it was further held that the injunction having been awarded against the railroad company, it would bind all the officers and employes of the companies properly notified of its scope though not made parties to the bill.⁷⁸ And where after the issuance of such injunction, the head of the labor union to which such employes belong is made a defendant by an amended bill, alleging that he as chief of the conspiracy, had issued or was about to issue an order to set in motion the machinery necessary to effect the purposes of the conspiracy, and that such order was more likely to be obeyed than the injunction issued by the court then in force, a mandatory injunction should be awarded forbidding him to issue the order, or if he has already issued it, commanding him to rescind it. It is the duty of the court promptly to prevent the probable obstruction to its main injunction, by auxiliary injunctive process, and if such obstruction has actually been interposed, to remove it by the same means. A mandatory preliminary injunction was held to be justified because the *status quo* is not a condition of rest but of action, the normal condition—the *status quo*—between connecting carriers under the interstate commerce act being a continuous passage of freight backward and forward between them which each carrier has a right to enjoy without interruption. The quasi public nature of the duty to be performed by the common carriers and the irreparable character of the injury likely to result are ample grounds therefor.⁷⁹ So it has similarly been held that a combination by officers of labor unions to compel recognition of their organizations and

⁷⁷ Toledo, etc. R. Co. v Pennsylvania Co., 54 Fed. 746.

⁷⁸ Toledo, etc. R. Co. v Pennsylvania Co., 54 Fed. 746.

⁷⁹ Toledo, etc. R. Co. v Pennsylvania Co., 54 Fed. 730, 19 L. R. A. 387, 5 Inters. Com. Rep. 522.

the employment of union men only, by inciting strikes, in breach of contract by the employes of a railroad company who are not dissatisfied with the terms of their employment, and to incite and induce the employes of connecting lines to refuse to interchange traffic with such railroad company or to afford facilities therefor, in order to prevent such company from affording reasonable facilities for the interchange of traffic between their line and other lines of railroad connecting therewith and from receiving, forwarding and delivery of passengers and property to and from its line with connecting lines of railroad, is in violation of section 3, and on a bill by the railroad company alleging these facts, a temporary restraining order will be granted commanding defendants to refrain from calling a strike of complainant's employes, and from in any other way interfering with complainant in the discharge of its duties as common carrier of interstate traffic until the hearing of an order to show cause why the order should not be modified or dissolved,"⁸⁰ and where striking employes of a railroad company employed in handling interstate traffic, use force and violence to procure other employes to leave the service thereby interrupting interstate traffic, an injunction will be awarded against the continuance of such acts.⁸¹ On the other hand a combination by employes of a railroad company to strike in order to secure better wages is not in violation of the Interstate Commerce Act, though the execution of the agreement may incidentally result in interference with the interchange of interstate traffic with connecting lines. The probable inconvenience or loss which the company would suffer by the withholding of the labor of such employes, is ordinarily a legitimate means to induce a compliance with their demands.⁸²

§ 195. Liability under Rev. Stat. U. S. § 5440.—Conspiracy to commit an offense against the United States.

This statute provides that "if two or more persons conspire to commit any offense against the United States * * and one or more

⁸⁰ *Wabash R. Co. v Hannahan*, 121 Fed. 563.

⁸¹ *Knudsen v Benn*, 123 Fed. 636.

⁸² See *Toledo, etc. R. Co. v Pennsylvania Co.*, 54 Fed. 730, 10 L. R. A. 387, 5 Inters. Com. Rep. 522; *Wabash R. Co. v Hannahan*, 121 Fed. 563.

And see as sustaining this view, *Arthur v Oaks*, 63 Fed. 310, 11 C. C. A. 209, 25 L. R. A. 414. In this case the Interstate Commerce Act was not alluded to, but the Court, (by Justice Harlan) declared in unequivocal language that such combination was lawful.

of such parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be liable to a penalty of not more than \$1,000, or to imprisonment for not more than 2 years or both fine and imprisonment in the discretion of the court." In consequence, if two or more persons conspire to wilfully interfere with or obstruct interstate commerce which is a misdemeanor both under the Interstate Commerce Act and the Anti-trust Act,⁸³ and any one or more of them do any act to effect the object of the conspiracy they are all liable under the statute quoted.⁸⁴ The commission of some overt act in furtherance of the conspiracy, however, is essential to constitute an offense under this statute, although the act need not be itself criminal or amount to a crime.⁸⁵ Thus where in furtherance of a conspiracy to compel the officers of several railroad companies to refuse equal facilities for the exchange of interstate freight to another railroad company, which is a violation of section 10 of the Interstate Commerce Act, the chief officers of the union to which such employes belong issues an order to such employes to refuse to handle interstate freight,⁸⁶ they are guilty of a criminal conspiracy in violation of Section 5440, and where such employes either refuse to handle the freight, or threaten to quit or actually quit in order to procure such officers to refuse to afford equal facilities for the interchange of interstate freight to another railroad company, such acts also are in furtherance of the conspiracy and render them also liable to the penalty of the same section. While a strike to better the terms of employment of those striking is lawful, a strike or threat to strike by those not dissatisfied with the terms of the employment to compel the employer to do an unlawful and criminal injury to another is not.⁸⁷ By the express provisions of Section 5440, all persons who conspire to violate the Interstate Commerce Act, are punishable, if any of them does any act in furtherance of the conspiracy.⁸⁸

⁸³ See *Supra* this chapter, Sections 191, 192.

⁸⁴ See *In Re Grand Jury*, 62 Fed. 834.

⁸⁵ *United States v Cassidy*, 67 Fed. 698.

⁸⁶ *Toledo, etc. R. Co. v Pennsylvania*

Co., 54 Fed. 730, 19 L. R. A. 387, 5 Inters. Com. Rep. 522.

⁸⁷ *Toledo, etc. R. Co. v Pennsylvania Co.*, 54 Fed. 730, 19 L. R. A. 387, 5 Inters. Com. Rep. 522.

⁸⁸ *Toledo, etc. R. Co. v Pennsylvania Co.*, 54 Fed. 730, 19 L. R. A. 387, 5 Inters. Com. Rep. 522

§ 196. Restraint by federal government under general powers conferred by Constitution and put into exercise by legislation.

On appeal to the Supreme Court of the United States from the judgment in the Debs Case,⁸⁰ it was held by that court that the facts alleged in the bill (the substance of which has been set forth in a preceding section and need not be repeated here),⁸⁰ clearly showed an existing obstruction of artificial highways for the passage of interstate commerce and transmission of the mails, not only temporarily existing but threatening to continue and that the Circuit Court had power to issue an injunction, on a bill filed by the United States.⁸¹ As previously shown, the Circuit Court relied mainly on the provisions of the Anti-trust Act in support of its power to issue an injunction,⁸² but in the Supreme Court the case was rested upon the broader ground that the Federal government had full power over interstate commerce and over the transmission of the mails, and, in the exercise of those powers, could remove everything put upon highways, natural or artificial, to obstruct the passage of interstate commerce, or the carrying of the mails. Three remedies were recognized as available to the government, indictment, the use of force by the executive branch of the government, and injunction. The remedy by indictment the court considered altogether inadequate. "If the inhabitants of a State," it was said, "or even a great body of them should combine to obstruct commerce, or the transportation of the mails, prosecutions for such offenses had in such a community would be foredoomed in advance to failure." And in respect of the other two remedies it was said: "While it might be competent for the government (through the executive branch and in the use of the entire executive power of the nation) to forcibly remove all such obstructions, it is equally within its competency to appeal to the civil courts for an inquiry and de-

⁸⁰ 64 Fed. 723.

⁸⁰ See *Supra* this chapter, Section 189.

⁸¹ In *Re Debs*, 158 U. S. 564, 15 Sup. Ct. 900, 39 L. ed. 1092.

⁸² See *Supra* this chapter, Section 189. And see dictum in *United States v Agler*, 62 Fed. 824, where it was said: "Prior to the 2nd day of July, 1890, it is entirely clear that

the United States, as a municipal corporation, had no power, either by petition or bill, to go into the courts of equity of the United States, and invoke the aid of those courts, by their restraining power, to prevent interference with the carriage of the mails or with the carriage of interstate commerce. Prior to that time the sole remedy was on the criminal side of the court."

termination as to the existence and character of any alleged obstruction, and if such are found to exist, or threaten to occur, to invoke the power of these courts to remove or restrain such obstructions; that the jurisdiction of courts to interfere in such matters by injunction is one recognized from ancient times and by indubitable authority; that such jurisdiction is not ousted by the fact that the obstructions are accompanied by or consist of acts in themselves violations of criminal law." The property interest which the government has in the mails gives it sufficient interest in the subject matter to maintain the suit, but aside from that it would be immaterial that it had no pecuniary interest. "While it is not the province of the government to interfere in the mere matter of private controversy between individuals, or to use its great powers to enforce the rights of one against another, yet, whenever the wrongs complained of are such as affect the public at large, and are in respect of matters which by the Constitution are entrusted to the care of the nation, and concerning which the nation owes the duty to all the citizens of securing to them their common rights, then the mere fact that the government has no pecuniary interest in the controversy is not sufficient to exclude it from the courts, or prevent it from taking measures therein to fully discharge these constitutional duties."

Considering the issuance of an injunction from the standpoint of expediency the court thought it preferable that the government instead of determining for itself questions of right and wrong and enforcing that determination "by the club of the policeman or the bayonet of the soldier," should submit the questions to the peaceful determination of judicial tribunals, and invoke their consideration and judgment as to the measure of its rights and powers, and the correlative obligations of those against whom it made complaint.

CHAPTER XV.

OBSTRUCTING AND RETARDING MAILS.

§ 197. Provisions of statutes prohibiting, and methods of carriage within provisions.

§ 198. Persons within the provisions of the Statute.

§ 199. Criminal liability for conspiracy to obstruct and retard the mails.

§ 200. Requisites and sufficiency of indictment.

§ 201. Suits to enjoin.—By company whose service is obstructed.

§ 202. By United States.

§ 197. Provisions of statutes prohibiting and methods of carriage within provisions.

A statute of the United States provided that "Any person who shall knowingly and wilfully obstruct and retard the passage of the mail, or any carriage, horse, driver or carrier carrying the same, shall for every such offense, be punishable by a fine of not more than one hundred dollars."⁹³ The statute having been passed prior to the introduction into the United States, of the method of transporting mail by railroads, its phraseology conformed to the conditions prevailing at that time, but it is equally applicable to the modern system of conveyance and protects alike the transportation of the mail by railroad trains, as it does the carriage by the old fashioned stage coach.⁹⁴ Furthermore there are statutes directed specifically to the carriage of the mails by railroad trains.⁹⁵ If a train is carrying the mail under the sanction of the postal authorities, it is, in the eye of the law, a mail train.⁹⁶ "A mail train," it is said, "is a train as usually and regularly made up, including, not

Cross References.

For right to strike in general, see *Supra* Chapter IV, STRIKES.

For law relating to boycotts generally, see *Supra* Chapters VII, BOYCOTTS OF CAPITAL AND THE SUBSTANTIVE LAW RELATING THERETO; IX, BOYCOTTS OF LABOR.

For right of union to compel its members to strike or withhold patronage, See *Supra* Chapter XI, EXERCISE

BY UNION OF DISCIPLINARY MEASURES AGAINST ITS MEMBERS AS AFFECTING RIGHTS OF THIRD PERSONS.

⁹³ Rev. St. U. S. 3995.

⁹⁴ United States v Cassidy, 67 Fed. 698, 703.

⁹⁵ United States v Cassidy, 67 Fed. 698, 703.

⁹⁶ United States v Cassidy, 67 Fed. 698, 781.

merely a mail car, but such other cars as are usually drawn in the train. If the train usually carries a Pullman car, then such a train, as a mail train, would include the Pullman car as a part of its regular make up.”⁹⁷

§ 198. Persons within the provisions of the Statute.

The statute applies to those who know that the acts performed, however innocent they may otherwise be, will have the effect of obstructing and retarding the passage of the mail, and who wrongfully and wilfully perform the acts with the intention that such shall be their operation.⁹⁸ It also applies to those persons who, having in view the accomplishment of other purposes, perform unlawful acts, which have the effect of obstructing and retarding the passage of the mails. In such case, the intention to obstruct and retard the passage of the mails will be imputed to the authors of the unlawful act, although the attainment of other ends may have been their primary object.⁹⁹ Knowledge by persons who stop or obstruct trains, that they carried mails, is not necessary in order that intent by them to obstruct or retard the mails may be inferred.¹ And where the purpose is to retard trains which transported mail, it makes no difference in point of law whether those whose acts resulted in retarding it were or were not willing that the car carrying the mail should go on.² The reason for this is that it is not practicable, usually for a railroad company to transport only mail cars because that would be attended by serious loss, and that by the prevention of the transit of other cars, there is an interference with the transportation of the mails.³

⁹⁷ United States v Cassidy, 67 Fed. 698, 762.

⁹⁸ United States v Cassidy, 67 Fed. 698; United States v Kirby, 7 Wall (U. S.) 485; In Re Grand Jury, 62 Fed. 828.

⁹⁹ United States v Cassidy, 67 Fed. 698, 704; In Re Grand Jury, 62 Fed. 840; United States v Kirby, 7 Wall (U. S.) 486.

¹ United States v Cassidy, 67 Fed. 727; United States v Debs, 65 Fed. 210, in which it was said: “The laws make all the railways post routes of the United States, and it is within ev-

ery one’s knowledge that a large portion of the passenger trains on these roads carry the mail. There is no stretch, therefore, either of law or common sense, to presume that the person obstructing one of those trains contemplated, among other intents, the obstruction of the mail.”

² United States v Cassidy, 67 Fed. 698; United States v Clark, Fed. Cas. 14, 805, 23 Int. Rev. Rec. 306; In Re Grand Jury, 62 Fed. 840.

³ United States v Clark Fed. Cas. 14, 805, 23 Int. Rev. Rec. 306; United States v Cassidy, 67 Fed. 727.

§ 199. Criminal liability for conspiracy to obstruct and retard the mails.

It is provided by statute that if two or more persons conspire together to commit any offense against the United States and one or more of such parties do any act to effect the object of the conspiracy, all the parties thereto shall be subject to fine or imprisonment or both.⁴ Consequently a conspiracy to obstruct the mails which is an offense against the United States renders those taking part in the conspiracy criminally liable if any overt act is committed in furtherance of the conspiracy by any of them. It is essential, however, that some overt act should have been committed, as under the statute conspiracy alone is not a crime.⁵ In applying the principles stated in this and the preceding sections of this chapter in the case of labor combinations it has been held that a strike by employes of a railroad company, which does not grow out of any dissatisfaction with the terms of employment or hold any relation thereto, but whose main motive is to retard the mails is a criminal conspiracy within the statute under consideration,⁶ as is also the use of force and intimidation by employes of a railroad company acting in concert to compel a carrier of the mail to suspend the operation of such business.⁷ Nor would it be any defense on a prosecution therefor that the railroad company obstructed and retarded the passage of the mails, or entered into a conspiracy in restraint of trade and commerce.⁸ If two or more employes of a railroad company wrongfully and corruptly agreed among themselves, for the purpose of creating public sympathy in a threatened strike that they would cause the mail trains to be stopped and do acts pursuant to that agreement they are guilty of a criminal conspiracy within the statutes.⁹ On the other hand where the obstruction or retarding of the mails is the individual result of a lawful exercise of the right of employes of a railroad company to quit the service of their employers (as for instance to maintain or advance the rate of wages) they are not guilty of any offense.¹⁰ In respect to the liability of

⁴ Rev. St. U. S. section 5440.

⁵ *United States v Debs*, 65 Fed. 210; *United States v Cassidy*, 67 Fed. 698; See also *Thomas v Cincinnati, etc. R. Co.* 621, Fed. 803, 4 Inters. Com. Rep. 788.

⁶ *United States v Cassidy*, 67 Fed. 698.

⁷ *United States v Cassidy*, 67 Fed. 698. And see *In Re Charge to Grand Jury*, 62 Fed. 824.

⁸ *United States v Cassidy*, 67 Fed. 727.

⁹ *United States v Debs*, 63 Fed. 346.

¹⁰ *United States v Debs*, 65 Fed. 210.

officers of a union for calling strikes it has been held that where officers vested with such authority enter into and execute an agreement to call a strike of the members in the employment of a railroad company, which strike will have the effect of retarding the mail, and to enforce their orders by effective penalties, and the purpose of the combination is to gratify personal ambition or malice, they are guilty of criminal conspiracy within the statutes.¹¹ If however they acted in good faith, and for the purpose of advancing the interests of the members of the union, they are guilty of no offense though the passage of the mails may be incidentally retarded.¹²

§ 200. Requisites and sufficiency of indictment.

An indictment under section 5440 for conspiracy to commit the offense of obstructing and retarding the mails prohibited by section 3995, should allege, in conformity with the wording of the last mentioned section that the conspiracy was entered into, to "knowingly and wilfully" commit such offense.¹³ It is not necessary, however, to charge that defendants knew at the time that the trains obstructed carried the mails of the United States.¹⁴ Nor is it necessary to allege that the acts were done feloniously, since the obstruction of the mails was not a felony at common law.¹⁵ Inasmuch as under section 5440, conspiracy alone is not a crime, and some overt act is essential to complete the offense, the indictment must allege some overt act. It is not restricted to a single overt act however. Several may be alleged and the government may rely on any or all of such acts.¹⁶ Where the overt acts alleged are the turning of switches, the overturning of railroad cars upon the tracks, etc., it is not open to the objection that the means of carrying out the conspiracy are not set out, and that for all that appears, the obstruction of the mails may have been the result of a lawful exercise of defendant's rights. The acts charged are so presumably unlawful that the non-existence of any circumstance that might make them possibly lawful is not an essential averment of the indictment.¹⁷

¹¹ In Re Charge to Grand Jury, 62 Fed. 828. 210.

¹² In Re Charge to Grand Jury, 62 Fed. 828. 210.

¹³ See United States v Debs, 65 Fed. 210. 210.

¹⁴ United States v Debs, 65 Fed. 210. 210.

¹⁵ United States v Debs, 65 Fed. 210.

¹⁶ United States v Debs, 65 Fed. 210.

¹⁷ United States v Debs, 65 Fed. 210.

§ 201. Suits to enjoin.—By company whose service is obstructed.

A combination by officers of labor unions, to compel recognition of their unions and the employment of union men only by inciting strikes in breach of contracts of employment by members of their unions in the employ of a railroad company, who are satisfied with the terms of their employment, thereby preventing such company from carrying the mails, is an unlawful conspiracy, and on a bill filed by such company a temporary restraining order will be granted forbidding such officers to call a strike.¹⁸ The members of such combination will not, however, be enjoined from calling a strike not involving a breach of contract where the purpose is to secure better wages though incidentally the passage of the mails would be interrupted by a strike.¹⁹

§ 202. —By United States.

Where officers of a railway union combine together, and with others, to compel an adjustment of a labor dispute between a manufacturer and its employes by creating a boycott against its cars, and to render the boycott effective prevent the running of many trains carrying the mails, and in addition thereto declare that they can and will tie up and paralyze any and every railroad which does not accede to their demand, an injunction to prevent the continuance of such acts will issue on a bill filed by the United States. The government having a property interest in the mails has such an interest in the subject matter as enables it to appear as party plaintiff in the suit.²⁰

¹⁸ *Wabash R. Co. v Hannahan*, 121 Fed. 563; and see as sustaining this view *Thomas v Cincinnati, etc. R. Co.*, 62 Fed. 803, 4 Inters. Com. Rep. 788.

¹⁹ See *Wabash R. Co v Hannahan*, 121 Fed. 563.

²⁰ *In Re Debs* 158 U. S. 564, 15 Sup. Ct. 900, 39 L. ed. 592.

CHAPTER XVI.

PROCURING BREACH OF CONTRACT.

- § 203. In general.
- § 204. Means employed.
- § 205. Just cause or excuse.
- § 206. Application of foregoing rules to cases arising out of trade disputes—Introductory statement.
- § 207. Procuring breach of contract of service by employes—Action for damages—General rule.
- § 208. Statutory limitation of rule.
- § 209. Suits for injunction.
- § 210. Procuring breach of contract by employes not to join union.
- § 211. Procuring discharge of employes in breach of contract of employment.
- § 212. Procuring breach of contract not involving relation of master and servant.
- § 213. Criminal liability for procuring breach of contract.

§ 203. In general.²¹

It is well settled that one who procures the breach of a contract of any character by one of the parties thereto to the injury of the other party, by the use of such means as false or fraudulent representations, violence, threats, intimidation, or coercion, is guilty of an actionable tort.²² It is also settled by the weight of authority that

²¹ See also *Infra* this chapter, sections 207, 208, 209, 212.

²² *Illinois*.—*Doremus v Hennessey*, 176 Ill. 608, 52 N. E. 924, 68 Am. St. Rep. 203, 43 L. R. A. 797; *Morehouse v Terrill*, 111 Ill App. 460.

Michigan.—*Enterprise Foundry Co. v Iron Moulders' Union*, 149 Mich. 31, 112 N. W. 685; *Morgan v Andrews*, 107 Mich. 33, 64 N. W. 869.

Maine.—*Perkins v Pendleton*, 90 Me. 166, 38 Atl. 96, 60 Am. St. Rep. 252.

Maryland.—*Gore v Condon*, 87 Md. 368, 39 Atl. 1042, 67 Am. St. Rep. 352, 40 L. R. A. 382.

Massachusetts.—*Moran v Dunphy*,

177 Mass. 485, 59 N. E. 125, 83 Am. St. Rep. 289, 52 L. R. A. 115; *Aberthaw Construction Co. v Cameron*, 194 Mass. 208, 80 N. E. 478, 120 Am. St. Rep. 542; *Vegelahn v Guntner*, 167 Mass. 92, 44 N. E. 1077, 57 Am. St. Rep. 443, 55 L. R. A. 82.

New Jersey.—*Barr v Essex Trades Council*, 53 N. J. Eq. 101, 30 Atl. 881; *Jersey City Printing Co. v Cassidy*, 63 N. J. Eq. 759, 53 Atl. 230.

New York.—*Ashlay v Dixon*, 48 N. Y. 430, 8 Am. Rep. 559; *Rice v Manley*, 66 N. Y. 82, 23 Am. Rep. 30; *Benton v Pratt*, 2 Wend. 385, 20 Am. Dec. 623; *American Law Book Co. v. Edward Thompson Co.*, 84 N. Y.

one who maliciously or without just cause of excuse, persuades another to break a contract of employment to the injury of the other party to the contract is guilty of an actionable tort, and that the rule is not confined to cases where the services rendered are menial in their nature, nor to those where the relation of master and servant strictly exists.²³ And while there are some decisions to the con-

Suppl. 225; *Beattie v Callanan*, 73 N. Y. Suppl. 58, 82 App. Div. 7; *Aldridge v Stuyvesant*, 1 N. Y. Super. Ct. 235.

Ohio.—*Dayton Mfg. Co. v Metal Polishers' etc. Union*, 11 Ohio Dec. 643.

United States.—*Angle v Chicago etc. R. Co.*, 151 U. S. 1, 14 Sup. Ct. 240, 38 L. ed. 55; *Knudsen v Benn*, 123 Fed. 636; *Old Dominion Steamship Co. v McKenna*, 30 Fed. 48; *Arthur v Oakes*, 63 Fed. 320, 11 C. C. A. 209, 25 L. R. A. 414, 4 Inters. Com. Rep. 744.

England.—*Quinn v Leathem* (1901) A. C. 495, 70 L. J. C. P. 78, 85 L. T. 289; *Green v Button*, 2 Cr. M. & W. 707, in which defendant by falsely pretending to one party to a contract that he had a lien upon certain property prevented such party from delivering it to plaintiff, and was held responsible for the loss occasioned thereby; *Walters v Greene*, (1899) 2 ch. 696, 68 L. J. Ch. 730, 81 L. T. 151; *Shepherd v Wakeman*, Sid. 79.

Canada.—*Krug Furniture Co. v Berlin Union of Amalgamated Woodworkers*, 5 Ont. Law Rep. 463; *Branch v Roth*, 10 Ont. Law. Rep. 284. See also the following cases which inferentially sustain this doctrine: *Boysen v Thorn*, 98 Cal. 584, 33 Pac. 492, 21 L. R. A. 233; *Kline v Eubanks*, 109 La. 241, 33 So. 211; *Daly v Cornwall*, 34 N. Y. App. Div. 27, 54 N. Y. Suppl. 107; *McCann v Wolff*, 28 Mo. App. 447.

²³ *Florida*.—*Chipley v Atkinson*, 23 Fla. 206, 1 So. 934, 11 Am. St. Rep. 367.

Georgia.—*Jones v Blocker*, 43 Ga. 331; *Salter v Howard*, 43 Ga. 601; *Employing Printers' Club v Dr. Blosser Co.*, 122 Ga. 509, 50 S. E. 353, 106 Am. St. Rep. 137, 69 L. R. A. 90.

Massachusetts.—*Walker v Cronin*, 107 Mass. 555.

New Hampshire.—*Bixby v Dunlap*, 56 N. H. 456, 22 Am. St. Rep. 475.

New Jersey.—*Jersey City Printing Co. v Cassidy*, 63 N. J. Eq. 759, 53 Atl. 230.

New York.—See *Haight v Badgely*, 15 Barb. 499.

North Carolina.—*Jones v Stanley*, 76 N. C. 355; *Haskins v Royster*, 70 N. C. 601, 16 Am. Rep. 780.

Ohio.—*Parker v Bricklayers' Union No. 1*, 23 W. L. B. 55, 10 Ohio Dec. (Reprint) 458.

Pennsylvania.—*Flaccus v Smith*, 199 Pa. St. 128, 48 Atl. 894, 85 Am. St. Rep. 779, 54 L. R. A. 64.

Texas.—*J. S. Brown Hardware Co. v Indiana Stove Works*, 96 Tex. 443, 73 S. W. 800.

United States.—*Iron Moulders' Union v Allis-Chalmers Co.*, 166 Fed. 45, 20 L. R. A. N. S. 315; *A. R. Barnes & Co. v Berry*, 156 Fed. 72; *Southern R. Co. v Machinists' Local Union*, 111 Fed. 49.

England.—*Lamley v Gye*, 2 El. & Bl. 216 (the leading case, in which it appeared that a singer had entered into a contract to sing only at the

trary," the trend of modern authority, it is believed, is to the effect that it is an actionable tort to maliciously persuade a party to the contract to break it to the injury of the other party thereto, whatever may be the nature of the contract, whether a contract of employment or not.²⁵ A contract right, it has been said, is property

theatre of plaintiff. Defendant maliciously persuaded her to break the contract and was held liable for the damages sustained by plaintiff in consequence thereof); *Smithies v Natl. Ass'n of Operative Plasterers*, (1909) 1 K. B. 310, 25 L. T. 202; *Read v Friendly Society of Operative Stone Masons*, (1902) 2 K. B. 732, 71 L. J. Q. B. 994, 87 L. T. 493; *Bowen v Hall*, 6 Q. B. D. 333, 50 L. J. Q. B. 305, 44 L. T. 461; *Gunter v Astor*, 4 J. B. Moore 12; *Hart v Aldridge*, *Conwp.* 54.

Canada.—*Branch v Roth*, 10 Ont. Law. Rep. 284.

As limiting or denying the rule stated in the text see *Bourlier v Macaulay*, 91 Ky. 135, 15 S. W. 60, 34 Am. St. Rep. 171, 11 L. R. A. 550, a case almost identical on the facts with *Lumbey v Gye*, *supra* in which it was held that the malicious persuasion of a singer to break a contract for exclusive personal services was not actionable; *Rogers v Evarts*, 17 N. Y. Suppl. 264, in which the court said that it was doubtful whether persuading an employe to break his contract gave rise to any cause of action; that in the case of no other contract does a man render himself liable as for tort by inducing its violation by persuasion; *B. J. Wolf & Sons v New Orleans Tailor-Made Pants Co.*, 113 La. 387, 37 So. 2, 62 R. R. A. 65; *Kline v Eubanks*, 109 La. 241, 33 So. 211, in which it was held that to cause a laborer to break a contract does not give a cause of action in the

absence of threats, fraud, deception or benefit.

²⁴ *California*.—*Boysen v Thorn*, 98 Cal. 584, 33 Pac. 492, 21 L. R. A. 233.

Kentucky.—*Chambers v Baldwin*, 91 Ky. 121, 15 S. W. 575, 34 Am. St. Rep. 165, 11 L. R. A. 545.

Louisiana.—*Kline v Eubanks*, 109 La. 241, 33 So. 211.

Missouri.—*Glencoe, Loud etc. Co. v. Hudson Brothers Commission Co.*, 138 Mo. 439, 40 S. W. 93, 60 Am. St. Rep. 560, 36 L. R. A. 804; *McCann v Wolff*, 28 Mo. App. 447.

New York.—*Ashtay v Dixon*, 48 N. Y. 430, 8 Am. Rep. 559; *Daly v Cornwall*, 34 N. Y. App. Div. 27, 54 N. Y. Suppl. 107.

²⁵ *Massachusetts*.—*Beakman v Marsters*, 195 Mass. 205, 80 N. E. 817, 11 L. R. A. N. S. 201.

New Jersey.—*Alfred W. Booth & Bro. v Burgess*, 72 N. J. Eq. 181, 65 Atl. 226.

North Carolina.—*Jones v Stanley*, 76 N. C. 355.

Texas.—*Raymond v Yarrington*, 96 Tex. 443, 73 S. W. 800, 97 Am. St. Rep. 911, 62 L. R. A. 962.

West Virginia.—*West Virginia Transportation Co. v Standard Oil Co.*, 50 W. Va. 611, 40 S. E. 591, 88 Am. St. Rep. 885, 56 L. R. A. 804.

Wisconsin.—See *Martens v Reilly*, 109 Wis. 464, 84 N. W. 840.

United States.—*Angle v Chicago etc. R. Co.*, 151 U. S. 1, 14 Sup. Ct. 340, 38 L. ed. 55.

England.—*Quin v Leathem*, (1901)

which is to be protected against undue influence by persons not parties thereto,²⁶ since such action on their part is a direct invasion of this right.²⁷ "The contract confers certain rights on the person with whom it is made, and not only binds the parties to it by the obligation entered into, but also imposes on all the world the duty of respecting that contractual obligation."²⁸ And a combination to procure a breach of contract is an unlawful conspiracy.²⁹

§ 204. Means employed.

If the means employed to procure the breach of a contract are fraud, violence or intimidation, there can be no justification, and where those circumstances exist, no necessity for determining what amounts to "just cause or excuse" can arise. But its determination becomes important when persuasion is the means used to induce the breach. This is so, because the right to immunity from interference with contractual rights is not absolute.³⁰

§ 205. Just cause or excuse.³¹

Circumstances may exist which cause the right to immunity from interference with contractual relations to cease to exist. These circumstances are said to amount to a justification or excuse on the part of the person who has caused the breach of contract. The so-called justification is an exceptional fact which shows that no tort was committed.³² The justification or excuse must be as broad as the

A. C. 495, 510, 70 L. J. C. P. 78, 85 L. T. 289, in which it was said by Lord McNaghten that it is a violation of legal right to interfere with contractual relations recognized by law, if there be no sufficient justification for it; *Walters v Green*, (1899), 2 Ch. 696, 68 L. J. Ch. 730, 81 L. T. 151; *South Wales Miners' Federation v Glamorgan Coal Co.*, (1905), A. C. 239.

²⁶ *Alfred W. Booth & Bro. v Burgess*, 72 N. J. Eq. 181, 65 Atl. 226; *Jersey City Printing Co. v Cassidy*, 63 N. J. Eq. 759, 53 Atl. 230; *Iron Moulders' Union v Allis-Chalmers Co.*, 166 Fed. 45, 20 L. R. A. N. S. 315.

²⁷ *Jersey City Printing Co. v Cassidy*, 63 N. J. Eq. 759, 53 Atl. 250;

Iron Moulders' Union v Allis-Chalmers Co., 166 Fed. 40, 20 L. R. A. N. S. 315.

²⁸ *Temperton v Russell*, (1893) 1 Q. B. D. 715, 62 L. J. Q. B. 412, 69 L. T. 78.

²⁹ *Arthur v Oakes*, 63 Fed. 311, 11 C. C. A. 209, 25 L. R. A. 44, 4 Inters. Com. Rep. 744; *Hitchman Coal Co. v. Mitchell*, 172 Fed. 963; *Thomas v Cincinnati etc. R. Co.*, 62 Fed. 803, 4 Inters. Com. Rep. 788.

³⁰ See *Alfred W. Booth & Bro. v Burgess*, 72 N. J. Eq. 181, 65 Atl. 226.

³¹ See also *Infra* this chapter, sections 207, 209, 211.

³² *Alfred W. Booth & Bro. v Burgess*, 72 N. J. Eq. 181, 65 Atl. 226.

act, and must cover not only the object sought but also the means to attain that object.³³ What amounts to just cause or excuse for interference is a matter which is very difficult to determine inasmuch as in practically all the decisions in which the question arose, the court held that it did not exist in the particular case under consideration. It has been said that the question is one to be determined on the facts of each case,³⁴ and that the justification which will be sufficient to exonerate a person from liability for procuring the breach of another's contract must be an equal or superior right in himself.³⁵ Such interference is not justifiable as legitimate trade competition,³⁶ although acts amounting to interference with one's rights of *possible contracts* are justified when done by another for the purpose of furthering his own interests as a competitor.³⁷ Nor is such interference justified on the grounds that the party causing the breach of contract acted on a wrong understanding of his own rights,³⁸ or that he acted honestly and without ill-will,³⁹ or even that he acted as an altruist seeking only the good of another without benefit to himself.⁴⁰ It is suggested by way of illustration that unwillingness of workmen engaged in a hazardous occupation to work in company with a reckless or incompetent fellow servant would furnish ample justification for inducing his discharge in breach of

³³ *Martell v White*, 185 Mass. 255, 69 N. E. 341, 102 Am. St. Rep. 341, 64 L. R. A. 260.

³⁴ *Glamorgan Coal Co. v South Wales Miners' Federation*, 89 L. T. 393, 72 L. J. Q. B. 893.

³⁵ *Read v Friendly Society of Operative Stonemasons*, (1902), 2 K. B. 732, 71 L. J. K. B. 994, 87 L. T. 493. See also *Berry v Donovan*, 188 Mass. 353, 74 N. E. 603, 108 Am. St. Rep. 499, 5 L. R. A. N. S. 849.

³⁶ *Beekman v Masters*, 195 Mass. 205, 80 N. E. 817, 11 L. R. A. N. S. 201; *Reynolds v Davis*, 198 Mass. 294, 84 N. E. 457, 17 L. R. A. N. S. 162; *Read v Friendly Society of Operative Stonemasons*, (1902), 2 K. B. 732, 71 L. J. K. B. 994, 87 L. T. 493.

³⁷ *Beekman v Masters*, 195 Mass. 205, 80 N. E. 817, 11 L. R. A. N. S. 201.

³⁸ *Read v Friendly Society of Operative Stonemasons*, (1902), 2 K. B. 88, 71 L. J. K. B. 994, 87 L. T. 493.

³⁹ *South Wales Miners' Federation v Glamorgan Coal Co.*, (1905), A. C. 239, (affirming (1903) 2 K. B. 545, 72 L. J. K. B. 893, 89 L. T. 393, which decision reverses (1903) 1 K. B. 118, 87 L. T. 232); *Read v Friendly Society of Operative Stone Masons*, (1902), 2 K. B. 88, 71 L. J. K. B. 994, 87 L. T. 493; *Branch v Roth*, 10 Ont. Law (Can.) 284. See also *Berry v Donovan*, 188 Mass. 353, 74 N. E. 603, 108 Am. St. Rep. 499, 5 L. R. A. N. S. 899; *Motley Green & Co. v Detroit Steel & Spring Co.*, 161 Fed. 389.

⁴⁰ *Read v Friendly Society of Operative Stone Masons*, (1902), 2 K. B. 88, 71 L. J. K. B. 994, 87 L. T. 493.

a contract of employment, by such pressure brought to bear on the employer as is incidental to a strike or a threat to strike. And it was said in an English decision that if a contract between B and C is one which B could not make consistently with his preceding contractual obligations towards A, A may induce him to break it.⁴¹

§ 206. Application of foregoing rules to cases arising out of trade disputes—Introductory statement.

Having stated the general rules applicable to the procuring of breach of contract, an attempt will be made to show their application in cases where the procuring of breaches of contract arose out of trade disputes.

§ 207. —Procuring breach of contract of service by employees. — Action for damages — — —General rule.

Where a union, (by statute made liable to be sued) or its officers or members, intentionally and without just cause or excuse, induces another's employes to quit his service in breach of their contracts of employment, he is entitled to recover the damages resulting from such tortious act, from such union, or from such combination of officers or members,⁴² and this it has been held is true whether the means used is peaceable persuasion,⁴³ or intimidation,⁴⁴ or threats or abusive language or a system of espionage.⁴⁵ Procuring a breach of such contracts is not justifiable as legitimate trade competition,⁴⁶ and it is immaterial that those inducing the breach of contract, acted in good faith and without ill-will toward the employer.⁴⁷ Nor is it

⁴¹ Buckley, L. J., in *Smithies v National Association of Operative Plasterers*, (1909) 1 K. B. 310, 337, 25 T. L. R. 202.

⁴² *Parker v Bricklayers' Union No. 1*, 10 Ohio Dec. (Reprint) 458, 21 W. L. B. 223; *Quinn v Leatham*, (1901), A. C. 495, 70 L. J. P. C. 76, 85 L. T. 289, (affirming (1899) 2 Jr. 412); *South Wales Miners' Federation v Glamorgan Coal Co.*, (1905) A. C. 239, (affirming (1903) 2 K. B. 545, 75 L. J. K. B. 893, 89 L. T. 393, 52 W. R. 165); *Walters v Green* (1899) 2 Ch. 696, 68 L. J. Ch. 730, 81 L. T. 151; *Krug Furniture Co. v Berlin Union of Amalgamated Woodworkers'*

Union, 5 Ont. Law (Can.) 463. And see *Walker v Cronin*, 107 Mass. 535.

⁴³ *Parker v Bricklayers' Union No. 1*, 10 Ohio Dec (Reprint) 458, 23 W. L. B. 223.

⁴⁴ See *Doremus v Hennessy*, 176 Ill. 608, 54 N. E. 924, 68 Am. St. Rep. 203, 43 L. R. A. 797.

⁴⁵ *Krug Furniture Co. v Berlin Union of Amalgamated Woodworkers*, 5 Ont. Law (Can.) 463.

⁴⁶ See *Doremus v Hennessey*, 176 Ill. 608, 52 N. E. 924, 68 Am. St. Rep. 203, 43 L. R. A. 797, (affirming 62 Ill. App. 391).

⁴⁷ *South Wales Miners' Federation v Glamorgan Coal Co.*, (1905) A. C.

a justification that the employer refused to discharge his non-union employees at the request of the union causing the breach of contract," or that he refused to fix his scale of prices at that agreed on by such union," or by the fact that the union inducing the breach acted in the bona fide belief that an association of employers, to which the employer injured by the action of the union belonged, intended to break a contract between it and the union providing for arbitration of disputes between employers and employees, or even by the fact that an actual intent existed on the part of the association to do so. ⁵⁰ A few illustrations of how these principles have been applied will be helpful. Thus in the case of *South Wales Miners' Federation v Glamorgan Coal Co.*,⁵¹ commonly called the "Stop-Day Case," miners employed in collieries, without notice to their employers, and in breach of their contracts, abstained from work on certain days upon the direction of a registered federation of miners. The federation acted honestly and without malice or ill will to the employers, and with the object of keeping up the price of coal by which the wages were regulated. It was held that the federation was liable for damages, no justification for their act being shown. In *Krug Furniture Co. v Berlin Union of Amalgamated Woodworkers*,⁵² it was held that damages are recoverable against a local trade union and its members in an action by employers of workmen, when by means of threats, abusive language, and a system of espionage, the workmen are induced to break their contracts of employment with their employers. And in *Walters v Green*,⁵³ it was held that where a number of masters (acting through a common

239, (affirming (1903) 2 K. B. 545, 72 L. J. K. B. 893, 89 L. T. 393 which decision reverses (1903) 1 K. B. 118, 87 L. T. 232).

⁵⁰ *Quinn v Leatham*, (1901) A. C. 495, 70 L. J. P. C. 76, 85 L. T. 289.

⁵¹ See *Doremus v Hennessy*, 176 Ill. 608, 52 N. E. 924, 68 Am. St. Rep. 203, 43 L. R. A. 797, (affirming 62 Ill. App. 391).

⁵² *Smithies v National Association of Operative Plasterers*, (1909) 1 K. B. 310, 25 T. L. R. 202, in which it was said by Buckley L. J. (at p 337): "This is setting up that where there are two independent contracts, the

breach of the one by the one party entitles a breach by the other party. This contention cannot in my judgment be sustained; and by Kennedy L. J. (at p. 341)." "The breach by B of his contract with A, cannot I think, properly be held to justify or excuse A in procuring C to break an independent contract with B. Nor do I think it would make any material difference if A be an association of which C is a member."

⁵¹ L. R. (1905) A. C. 239.

⁵² 5 Ont. Law (Can.) 463.

⁵³ (1899) 2 Ch. 696, 68 L. J. Ch. 730, 81 L. T. 151.

agent) and a workman entered into a contract with one of the masters to be subsequently specified, the chance of employing the workman is sufficient damage to a master, even before he has been specified, to entitle him to maintain an action against those who combine to induce the workman to break his engagement. Nevertheless to render a union, by statute made liable to be sued, liable for damages caused by persuading men to break their contracts of employment, it is essential that it should have expressly authorized the acts resulting in the damage or ratified them. Thus where branch officials of a union induced men to break their contract and go on strike and the terms upon which branches of the union were authorized to strike were defined in the rules, which were not observed, and the governing body of the union expressed disapproval of the strike, it was held that the officials were not agents of the association in procuring the breach of contract and that the union was not liable for such breach.⁵⁴

§ 208. — — —Statutory limitation of rule.

In England the rule stated in the preceding section is limited by recent legislation, so far as labor unions are concerned. By section 3 of the "Act to provide for the regulation of Trade Unions and Trade Disputes enacted Dec. 21, 1906, it is provided that "An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment," and by Section 1, that "an act done in furtherance of an agreement or combination by two or more persons, if done in contemplation or furtherance of a trade dispute shall not be actionable, unless the act if done without any such agreement or combination would be actionable." It seems plain that these two provisions construed together mean that a combination of workmen, who in contemplation or furtherance of a trade dispute procure other workmen to break their contracts of employment have done nothing actionable. This statute, however it is held, does not operate retrospectively to prevent the further maintenance of an action brought against a union before it was passed.⁵⁵ "It is a proposition founded in com-

⁵⁴ Denaby & Cadeby Main Collieries v Yorkshire Miners' Union, (1906) A. C. 384, 76 L. J. K. B. 961, 95 L. T. 561.

⁵⁵ Smithies v National Association of Operative Plasterers, (1909) 1 K. B. 310, 25 T. L. R. 202.

mon sense that where vested rights have already accrued, and legislation is passed which uses words expressive of futurity, such as 'shall,' or 'shall not,' which *prima facie* would appear to be meant to be applicable to future cases, it is not to be construed retrospectively so as to affect those vested rights, unless terms are used which clearly compel the court to give it that construction.'"⁵⁶

§ 209. — —Suits for injunction.

In many decisions, the question has arisen whether the writ of injunction to prevent interference by third persons with contractual rights is a permissible remedy for the party whose rights are threatened. In one of them, the court was of the opinion that it was doubtful whether the inducing of an employe by persuasion to break his contract of service gave rise to any cause of action whatever and refused to grant an injunction to prevent acts of this character on the ground that injunctions should be denied in cases of doubtful right.⁵⁷ As already shown however, this view is opposed to the great weight of authority,⁵⁸ and in respect of injunctions it is generally held that where plaintiff proves that defendant unlawfully interferes, or threatens to interfere, with his rights under a contract and further shows that damages will not afford an adequate remedy, an injunction will be granted.⁵⁹ The principle has found frequent application in the frequent disputes between capital and labor. It is very generally held that an injunction will issue on the application of an employer of labor, to prevent a combination of members or officers of a union from carrying into execution an agreement to procure his employes to quit his service in breach of their contracts of employment where the remedy at law would be inadequate,⁶⁰ and in the suit for injunction,

⁵⁶ Williams L. J. in *Smithers' v National Ass'n of Operative Plasterers*, (1909) 1 K. B. 310, 319, 25 T. L. R. 202.

⁵⁷ *Rogers v Evarts*, 17 N. Y. Suppl. 264.

⁵⁸ See *supra* this chapter, section 203.

⁵⁹ *Beckman v Masters*, 195 Mass. 205, 80 N. E. 817, 11 L. R. A. N. S. 201. And see cases cited in subsequent notes in this section.

⁶⁰ *Jersey City Printing Co. v Cassidy*, 63 N. J. Eq. 759, 53 Atl. 230;

W. & A. Fletcher Co. v International Ass'n of Machinists, N. J. 55 Atl. 1077; *Titusville Iron Co. v Quinn*, 13 Pa. Dist. 416; *Iron Moulders' Union v Allis-Chalmers Co.*, 166 Fed. 45, 20 L. R. A. N. S. 315; *A. R. Barnes & Co. v Berry*, 156 Fed. 72; *Knudsen v Benn*, 123 Fed. 636; *Wabash etc. R. Co. v Hannahan*, 121 Fed. 163; *Southern R. Co. v Machinists' Local Union*, 111 Fed. 49; *Arthur v Oakes*, 63 Fed. 310, 321, 11 C. C. A. 209, 25 L. R. A. 414, 4 Inters. Com. Rep. 744;

damages may be awarded.⁶¹ It is no justification that defendants acted without ill-will, but in good faith in pursuance of the provisions of the constitution of the union prohibiting its members from working with non-union men, the employer not being aware of, or a party to such provisions.⁶² The rule applies where the means to procure the breach of contract are mere molestation or annoyance,⁶³ payment of money or of transportation expenses,⁶⁴ threats of the imposition of fine,⁶⁵ abusive language,⁶⁶ or violence or threats of violence,⁶⁷ and where no justification is shown, it is applicable where the method employed to procure the breach of contract is persuasion.⁶⁸ In applying the principles enunciated it has been held that the officers, agents and representatives of a labor union may be enjoined from calling a strike in violation of a contract of employment,⁶⁹ and where striking employes of a railroad company attempt to compel other employes in its service, to quit in breach of their contracts, by threats, abusive language or intimidation and the business interfered with, is the transportation of interstate commerce which is obstructed or stopped by such acts, the continuance thereof will be enjoined.⁷⁰

§210. Procuring breach of contract by employes not to join union.

Knowingly enticing and persuading apprentices under contract with their employer, an owner of a non-union plant, not to join a union, to violate their contract in this regard, is unlawful and will be restrained by injunction, where such interference if allowed to continue would ruin his business, and the damages are incapable of

Branch v Roth, 10 Ont. Law (Can.) 284. See also *Vegehn v Guntner*, 167 Mass. 92, 44 N. E. 1077, 57 Am. St. Rep. 443, 55 L. R. A. 92; *York Mfg. Co. v Oberdick*, 25 Pa. Co. Ct. 321.

⁶¹ Branch v Roth, 10 Ont. Law (Can.) 284.

⁶² Branch v Roth, 10 Ont. Law (Can.) 284.

⁶³ *Jersey City Printing Co. v Cassidy*, 63 N. E. 759, 53 Atl. 230.

⁶⁴ *Jersey City Printing Co. v Cassidy*, 63 N. J. Eq. 309, 53 Atl. 230.

⁶⁵ Branch v Roth, 10 Ont. Law

(Can.) 284.

⁶⁶ *Knudsen v Benn*, 123 Fed. 636.

⁶⁷ *Jersey City Printing Co. v Cassidy*, 63 N. J. Eq. 759, 53 Atl. 230.

⁶⁸ *Jersey City Printing Co. v Cassidy*, 63 N. J. Eq. 759, 53 Atl. 230; *W. & A. Fletcher Co. v International Ass'n of Machinists*, (N. J.) 55 Atl. 1077; *Knudsen v Benn*, 123 Fed. 636; *Southern R. Co. v Machinists' Local Union*, 111 Fed. 49.

⁶⁹ *A. R. Barnes & Co. v Berry*, 156 Fed. 72; *Wabash etc. R. Co. v Hannah*, 121 Fed. 563.

⁷⁰ *Knudsen v Benn*, 123 Fed. 636.

ascertainment at law.⁷¹ A statute providing that it shall be lawful for any labor union or workmen acting either as individuals or as mere members of a club to refuse to work for any persons whenever they think the wages paid insufficient or the continued labor would be contrary to the rules and regulation of the union, does not authorize an interference with an employer's business by persuading his workmen to join a union in violation of a contract not to do so.⁷²

§ 211. Procuring discharge of employes in breach of contract of employment.

It is an actionable wrong for a union to procure an employer, by threats of strike, to discharge an employe in breach of contract of employment, and the discharged employe is entitled to recover the resulting damages in an action against the union and its officers.⁷³ The fact that the defendants acted in good faith and to further the best interest of the union, and that the employment of plaintiff was in breach of a rule of the union to which the employer had agreed and subscribed was held to furnish no justification for the acts complained of.⁷⁴

§ 212. Procuring breach of contract not involving relation of master and servant.

As was stated in another section of this chapter, it is well-settled that the procuring of a breach of contract of any character by such means as fraud, violence, intimidation or coercion, is an actionable wrong.⁷⁵ In one of the cases arising out of the great railroad strike of 1894, it was held that a combination by employes of a railroad company to strike for the purpose of compelling it to break a contract to use the cars of another company and thereby injure the latter company, when the relation thus sought to be broken had no

⁷¹ *Flaccus v Smith*, 199 Pa. St. 128, 48 Atl. 894, 85 Am. St. Rep. 779, 54 L. R. A. 640; *Hitchman Coal Co. v Mitchell*, 172 Fed. 963, (affirmed by U. S. Ct. of Appeals March 11, 1910). And see *York Mfg. Co. v Oberdick*, 25 Pa. Co. Ct. 321.

⁷² *Flaccus v Smith*, 199 Pa. St. 128, 48 Atl. 894, 54 L. R. A. 640, 85 Am. St. Rep. 779.

⁷³ *Read v Friendly Society of Operative Stone Masons*, (1902) 2 K. B. 732, 71 L. J. K. B. 994, 87 L. T. 493; *Aberthaw Construction Co. v Cameron*, 194 Mass. 208, 80 N. E. 478, 120 Am. St. Rep. 542.

⁷⁴ *Read v Friendly Society of Operative Stone Masons*, (1902) 2 K. B. 732, 71 L. J. K. B. 994, 87 L. T. 493.

⁷⁵ See *supra* this chapter, section 203.

effect whatever on the character or reward of the striking employes' service, is an unlawful conspiracy. The motive for quitting and the end sought thereby it was said, made the injury inflicted unlawful and the combination by which it was effected an unlawful conspiracy.⁷⁶ It has also been held that officers and members of a labor union are liable for the resulting damages where they demand of an employer that he discharge his non-union men and on his refusal to do so, by threats of calling out employes of his customers, induce the latter to break their contracts,⁷⁷ and a continuance of such acts by them may be enjoined.⁷⁸ And where officers of a union because of the refusal of a building contractor to hire only union men induces one for whom he is putting up a building to break the contract, the contractor is entitled to recover the damages caused by such unlawful act, but not to a permanent injunction to restrain the union and its officers from any interference in the future, if in the performance of other contracts he chooses to employ non-union workmen. The fact that defendants have been guilty of unlawful conduct raises no presumption that in the future they will engage in similar wrongdoing.⁷⁹ So a combination of persons having no interest in an employer's business, who on his refusal to fix the rate of wages paid by him at their dictation cause his patrons to break their contracts by threats of injury to their business are liable in damages therefor,⁸⁰ and where a labor union induces persons advertising in a newspaper to cease advertising therein in breach of their contracts, by threats of a withdrawal of the patronage of organized labor from them, the continuance of such acts may be enjoined.⁸¹ So it has been held that persuasion and threats to compel the cancellation of a contract with complainant to deliver meals and supplies necessary for the use of its non-union employers may be restrained by injunction,⁸² and the fact that a master painter refuses to recognize in a formal way

⁷⁶ *Thomas v Cincinnati etc. R. Co.*, 62 Fed. 803, 4 Inters. Com. Rep. 788.

⁷⁷ *Quinn v Leatham*, (1901) A. C. 495, 70 L. J. C. P. 76, 85 L. T. 289.

⁷⁸ *Alfred W. Booth & Bro. v Burgess*, 72 N. J. Eq. 181, 65 Atl. 226.

⁷⁹ *Aberthaw Construction Co. v Cameron*, 194 Mass. 208, 80 N. E. 478, 120 Am. St. Rep. 542.

⁸⁰ *Doremus v Hennesey*, 176 Ill. 608, 54 N. E. 924, 68 Am. St. Rep. 203, 43 L. R. A. 797, (affirming 62 Ill. App. 391); *Old Dominion Steamship Co. v McKenna*, 30 Fed. 48.

⁸¹ *Barr v Essex Trades Council*, 53 N. J. Eq. 101, 30 Atl. 881.

⁸² *Enterprise Foundry Co. v Iron Moulders' Union*, 149 Mich. 31, 112 N. W. 685.

a labor union of journeymen painters and offers an alleged affront to its walking delegate does not justify them in causing parties who have entered into contracts with him to deliberately break such contracts, by means of threats to cause and by actually causing a strike of all workmen in the employ of such parties, and an injunction will lie to prevent the doing or continuance of such acts.⁸² On the other hand it has been held that where after the inception of a strike with a lawful end in view, the employer sends his material to manufacturers of the same kind of products to be worked up for him, it is lawful for the strikers to persuade the employes of such manufacturers, who are members of the same union as the strikers to refuse to work on such materials, and notify their employers that a strike will be inaugurated unless the contracts with the employer against whom the strike is in force are cancelled.⁸⁴ In support of this view it was said that if the proprietor had the right—which seems to be perfect—to seek the aid of fellow foundry-men to the end that the necessary element of labor should enter into his product, the strikers had a reciprocal right of seeking the aid of fellow moulders to prevent that end. To whatever extent employers may lawfully combine and co-operate to control and supply and the conditions of work to be done, to the same extent should be recognized the right of workmen to combine and co-operate to control the supply and the condition of the labor that is necessary to the doing of the work.⁸⁵ The fact that this cessation of work on the part of the employes so persuaded might involve their employers in a breach of contract is wholly incidental and clearly distinguishable from a direct interference with contract relations by persuading men to break their contracts of employment.

§ 213. Criminal liability for procuring breach of contract.

It has been held in some of the earlier English cases, that a combination, to injure a man in his business or calling by inducing workmen in his employ to break their contracts of employment is an indictable conspiracy,⁸⁶ although no threats or intimidation are

⁸² *Beattie v Callanan*, 81 N. Y. Suppl. 415, 82 N. Y. App. Div. 7.

⁸⁴ *Iron Moulders' Union v Allis-Chalmers Co.*, 166 Fed. 45, 20 L. R. A. N. S. 315.

⁸⁵ *Iron Moulders' Union v Allis-Chalmers Co.*, 166 Fed. 45, 20 L. R. A. N. S. 315.

⁸⁶ *Reg. v Duffield*, 5 Cox C. C. 404; *Reg. v Rowlands*, 5 Cox C. C. 460, 17 Ad. & El. N. S. 671.

used."⁸⁷ In the United States it was held in a decision of the federal court that a combination by striking locomotive engineers to induce other employes of the railroad company against which a strike was in operation to quit the service of the company in breach of their contracts of employment was an indictable conspiracy.⁸⁸ And in another decision it was said that where the officers of a union on the refusal of a company to fix the rate of wages according to the dictation of the combination, procures its patrons to break existing contracts through threats of loss and injury to them, they are guilty of a criminal conspiracy both at common law and under the statute making it an offense to prevent another from exercising his trade or calling by force threats or intimidation.⁸⁹

⁸⁷ Reg. v Duffield, 5 Cox C. C. 404. obstructing mails).

⁸⁸ United States v Stevens, 2 Hask. 164, Fed. Cas. 16, 392 (indictment for
⁸⁹ Old Dominion Steamship Co. v McKenna, 30 Fed. 48.

CHAPTER XVII.

HOW ACTIONS BROUGHT BY OR AGAINST LABOR UNIONS.

- § 214. Actions by or against in common name—Where practice unaffected by statute.
- § 215. Under statutory provisions changing rule—Expressly.
- § 216. By implication.
- § 217. Actions by or against a few members or officers in representative capacity.—In suits in equity.
- § 218. In actions at law.
- § 219. Statutes authorizing suits in name of officers.

§ 214. Actions by or against in common name—Where practice unaffected by statute.

Technically, proceedings against an incorporated labor union, are proceedings against the members individually and not *in solido* against the union, as in the case of incorporated societies,⁹⁰ and while the union may sue or be sued by joining all the members as plaintiffs or defendants,⁹¹ it can neither sue nor be sued in its common name either at law or in equity in the absence of some statutory provisions authorizing such procedure.⁹² The reason for this

Cross References:

For specific application of the general principles enunciated in this chapter, see the various chapters in this work.

⁹⁰ *American Steel & Wire Co. v Wire Drawers' etc. Union*, 90 Fed. 606.

⁹¹ *Branson v Industrial Workers of the World*, (Nev.) 95 Pac. 354.

⁹² *Indiana*.—*Karges Furniture Co. v Amalgamated Woodworkers' Union*, 165 Ind. 421, 75 N. E. 877, 2 L. R. A. N. S. 788.

Massachusetts.—*Picket v Walsh*, 192 Mass. 572, 78 N. E. 753, 116 Am. St. Rep. 272, 6 L. R. A. N. S. 1067; *Reynolds v Davis*, 198 Mass. 294, 84 N. E. 457, 17 L. R. A. N. S. 162; *Casson v Driscoll*, 199 Mass. 443, 85 N. E. 529.

Minnesota.—*St. Paul Typothetae v St. Paul Bookbinders' Union*, 94 Minn. 351, 102 N. W. 725.

Nebraska.—*Cleland v Anderson*, 66 Neb. 252, 92 N. W. 306.

Nevada.—See *Branson v Industrial Workers of the World*, 95 Pac. 354.

New Jersey.—*Mayer v Journeymen Stone Cutters Ass'n*, 47 N. J. Eq. 519, 20 Atl. 490.

New York.—*Hanke v Cigar Makers' International Union*, 58 N. Y. Suppl. 412, 27 Misc. 529.

United States.—*American Steel & Wire Co. v American Wire Drawers' etc. Union*, 90 Fed. 598.

England.—*Edinburg v District Aerated Water Def. Ass'n*, 5 F. (Sc.) 459.

Canada.—*Metallic Roofing Co. of*

is that in order to conduct judicial proceedings in court, a party litigant must be either a natural or artificial person,⁹³ and that there is no such entity known to the law as an unincorporated association.⁹⁴ Voluntary associations are not, in their collective capacity and name, recognized at common law, as having any legal existence distinct from their members.⁹⁵ Subject to an exception applicable to suits in equity only, which will be hereinafter considered,⁹⁶ all the individual members of an unincorporated labor union must be joined either as plaintiffs or defendants both in actions at law and in suits in equity, in the absence of statute providing otherwise.⁹⁷ Now inasmuch as the membership of these organizations is ordinarily very large, a rigid adherence to this rule would impose great inconvenience upon the organizations themselves as well as hardship upon those seeking redress against them, for it would be impossible, in many instances for non-members to obtain the names of more than a small part of the membership, without great effort, delay and expense.⁹⁸ This difficulty however, has in a large measure been removed by legislation.⁹⁹ Furthermore the modern trend of opinion is to the effect that the objection that all the members are not made parties, is one that may be waived and is waived unless the objection be raised at the proper time and in the proper manner.¹ Accordingly it was held in one decision that a union which appears and pleads in an apparently corporate capacity can-

Canada v Local Union No. 30, Amal. etc. Ass'n, 5 Ont. L. Rep. 424, (affirmed in 9 Ont. L. Rep. 171).

⁹³*St. Paul Typothetae v St. Paul Bookbinders' Union*, 94 Minn. 351, 102 N. W. 725.

⁹⁴*Pickett v Walsh*, 192 Mass. 572, 78 N. E. 753, 116 Am. St. Rep. 272, 6 L. R. A. N. S. 1067.

⁹⁵*Karges Furniture Co. v Amalgamated Woodworkers' Union*, 165 Ind. 421, 75 N. E. 877, 2 L. R. A. N. S. 788.

⁹⁶See *Infra* this chapter, section 217.

⁹⁷*St. Paul Typothetae v St. Paul Bookbinders' Union*, 94 Minn. 351, 102 N. W. 725; *Pickett v Walsh*, 192 Mass. 592, 78 N. E. 753, 116 Am. St. Rep. 272, 6 L. R. A. N. S. 1067; *Bran-*

son v Industrial Workers of the World, (Nev.) 95 N. W. 354.

⁹⁸See *Branson v Industrial Workers of the World*, (Nev.) 95 Pac. 354.

⁹⁹See *Infra* this chapter, sections 215, 216.

¹*A. R. Barnes & Co. v Chicago Typographical Union*, 232 Ill. 402, 83 N. E. 932, 122 Am. St. Rep. 129, 14 L. R. A. N. S. 1150; *Flannery v People*, 225 Ill. 62, 80 N. E. 60; *Iron Moulders' Union v Allis-Chalmers Co.*, 166 Fed. 45, 20 L. R. A. N. S. 315; *Krug Furniture Co. v Berlin Union of Amalgamated Woodworkers*, 5 Ont. Law Rep. (Can.) 463; *Centre Star Min. Co. v Roseland Miners' Union*, 9 Brit. Col. (Can.) 190. And see *Parties*, 30 Cyc. 29.

not object on the trial that it is not incorporated or liable to be sued; that such objection must be specially pleaded,² and in another that where the bill treated a number of unions as representative of their membership, and an individual member filed a verified answer in the name of the unions, alleging that he had been authorized by them so to do, and the case was carried through three hearings (temporary injunction, contempt, final decree) without a suggestion that there was a defect of parties, or rather a defect in the form under which complainant sought to have the membership of the unions brought into court, an objection that defendant was a voluntary unincorporated association which could not be sued as such cannot be made on appeal and that an injunction against the association in its common name will be sustained.³ So it has been held that although a bill is filed in the name of an unincorporated union, yet if each member filed a written consent that the suit be so brought, the defect is one of form and not of substance which can only be raised by demurrer or a motion to dissolve the injunction, and the defect may be cured by amendment after issuance of the injunction.⁴

§ 215. —Under statutory provisions changing rule— —Expressly.

In many jurisdictions, the common law rule regarding suits by and against voluntary associations has been materially changed by statute. Statutes of many states contain express provisions either for the bringing of actions in the common name of a voluntary association, or the bringing of action against a voluntary association in its common name, and some of the statutes contain both provisions.⁵ These statutes apply, of course, to unincorporated labor unions, and such a union may be sued in its common name under a statute allowing a voluntary association to be sued in its common name.⁶ A statute containing a provision of this character does not, however, authorize such union to sue in its common name.⁷ So

² *Krug Furniture Co. v Berlin Union of Amalgamated Woodworkers*, 5 Ont. Law Rep. 463.

³ *Iron Moulders' Union v Allis-Chalmers Co.*, 166 Fed. 45, 20 L. R. A. N. S. 315.

⁴ *Flannery v People*, 225 Ill. 62, 80 N. E. 60.

⁵ See statutes of the various states.

⁶ *United States Heater Co. v Iron Moulders' Union*, 129 Mich. 354, 88 N. W. 889.

⁷ *Mayer v Journeymen Stone Cutters' Ass'n*, 47 N. J. Eq. 519, 20 Atl. 492. See also *St. Paul Typothetae v St. Paul Bookbinders' Union*, 94 Minn. 351, 102 N. W. 975.

where the right conferred to sue a voluntary association in its common name, is limited to those which are engaged in business, it is not permissible to sue in its common name an unincorporated labor union, where as is usually the case it is not engaged in any business, and has as its sole object the promotion of the interests and welfare of its members. The purpose of such a statute is to authorize the courts to take jurisdiction over unincorporated associations engaged under a common name in some sort of business in which property is bought, and sold, debts contracted—concerns owning and holding property and incurring pecuniary liability.⁹ Legislatures have power to enact statutes of the character under consideration. It is for them to determine who may sue and be sued so long as there is no interference with vested rights, or denial of any remedy. The law it is said deals with conditions as they exist. It recognizes that there may be unincorporated voluntary associations, clubs and societies, which do or may do things which make it desirable for them to have the right to bring actions at law or in chancery and also that it may be necessary or desirable to make them defendants in an action at law or proceeding in chancery.⁹ Nor can it be urged as an objection, that such statutes are class legislation and can only be used effectively against organized labor.¹⁰

§ 216. — —By implication.

The right of an unincorporated labor union to sue in its common name or its liability to be so sued, may be conferred by implication as well as expressly. This principle finds apt illustration in the case of labor unions registered under the English Trade Union Act of 1871 which gives to registered unions the power to own property and act by agents. It was held by the House of Lords,¹¹ reversing a lower court decision,¹² that a registered trade union

⁹ *St. Paul Typothetae v St. Paul Bookbinders' Union*, 94 Minn. 351, 102 N. W. 975.

¹⁰ *U. S. Heater Co. v Iron Moulders' Union*, 129 Mich 354, 88 N. W. 889.

¹¹ *United States Heater Co. v Iron Moulders' Union*, 129 Mich. 354, 88 N. W. 889, in which it was said: "There is nothing in the provisions of the law which indicates that it is aimed at organized labor. There is hard-

ly a town, village or city or a college or university, in this state which has not its voluntary associations, clubs or societies to which the provisions of the law apply."

¹² *Taff Vale Ry. v Amalgamated Society of Ry. Servants*, 1901 (A. C.) 426, 70 L. J. K. B. 905, 85 L. T. 147 50 W. R. 44, 65 J. P. 596.

¹³ (1901) 1 K. B. 170, 83 L. T. 474, 49 W. R. 101, 64 J. P. 788.

might be sued in its registered name. In this instructive case which created wide-spread dissatisfaction among the unions, it was said by Lord Halsbury that "If the legislature has created a thing which can own property, which can employ servants, and which can inflict injury, it must be taken * * * to have impliedly given the power to make it suable in a court of law for injuries purposely done by its authority and procurement," and by Lord Shand that though by neither of the statutes are trade unions although registered declared to be incorporations, which would as a consequence give them a right to sue and make them liable to be sued in the society's name, yet the right to sue and the liability to be sued may be conferred by statute either expressly or by implication, and that the power of suing and the liability to be sued in the society's name is clearly and necessarily implied by the provisions of the statutes. It has further been held that under this statute, the trustees of the union must be joined as parties in order to reach the funds of the union.¹³ This case has been followed on the first point by an Ohio *nisi prius* case, which construes the Ohio statutes relating to labor unions, as having practically the same effect as the English registration act, and as allowing suit to be brought against a union in its common name.¹⁴

§ 217. Actions by or against a few members or officers in representative capacity—In suits in equity.

In equity the rule in respect of parties to suits by and against unincorporated labor unions, is not so strict as in actions at law. Where the members are numerous, a bill may be brought by a few of the members or officers in a representative capacity, in behalf of themselves and all other members,¹⁵ and a bill may likewise be

¹³ See Pennant's Trade Unions and the Law, p. 81; *Howden v Yorkshire Miners Ass'n*, (1903) 1 K. B. 323; *Linaker v Pilcher*, 70 L. J. K. B. 396, 84 L. T. 421, 49 W. R. 413.

¹⁴ *Hillenbrand v Building Trades Council*, 14 Ohio Dec. N. P. 628.

¹⁵ *Illinois*.—*Guilfoyle v Arthur*, 158 Ill. 600, 41 N. E. 1009.

Kentucky.—*Hetterman v Powers*, 102 Ky. 133, 43 S. W. 180, 80 Am. St. Rep. 348, 39 L. R. A. 211.

Maine.—*Flaherty v Portland Longshoremen's Benevolent Society*, 99 Me. 253, 59 Atl. 58.

Maryland.—*Cigar Makers' Union No. 1 of Baltimore v Link*, 29 L. R. A. 202, note; *Cigar Makers' Official Journal*, Nov. 1886.

Massachusetts.—*Snow v Wheeler*, 113 Mass. 179; *Birmingham v Gallagher*, 112 Mass. 190.

Nevada.—*Branson v Industrial Workers of the World*, 95 Pac. 354.

maintained against a few of the members or officers, as representing the whole membership of the union.¹⁶ This is in accordance with the rule of equity pleading which dispenses with the joinder of all members of an unincorporated association, having a common interest and too numerous to be made parties individually,¹⁷ and where suit is originally brought against a union by name the bill may be so amended as to run only against certain individuals or officers and members of the union, and against the other members of the union as represented by such individuals.¹⁸ In suits of this character, it must be alleged of record that the persons by or against whom suit is brought are suing or being sued in a representative character, so as to present to the court the question whether sufficient parties are before it to properly represent the rights of all,¹⁹ and where a bill for injunction is brought against labor unions by name, and several persons individually who are not alleged to be officers or members of such unions, it is entirely defective as a suit against such unions.²⁰ The defect, however, may be cured by an amendment alleging that such persons are members or officers of the unions, under a statute providing that the court may at any time permit either of the parties to amend any defect in the process or pleadings upon such conditions, as it

New York.—Strasser v Moonelis, 55 N. Y. Super. Ct. 197, 11 N. Y. St. 270; Bloete v Simon, 19 Abb. N. C. 88.

Ohio.—Renkert v Bamberger, (Com. Pl.) 29 L. R. A. 202, note, Cigar Makers' Official Journal April 1897.

Texas.—Galbreath v Phillipson, (Dallas County Dist. Ct.) 29 L. R. A. 205, note, Cigar Makers' Official Journal, April 1891.

England.—Wolfe v Matthews, 21 Ch. Div. 194, 47 L. T. 158; Alfin v Hewlett, 18 T. L. R. 664.

¹⁶ Pickett v Walsh, 192 Mass. 572, 78 N. E. 753, 6 L. R. A. N. S. 1067, 116 Am. St. Rep. 272; Reynolds v Davis, 198 Mass. 294, 84 N. E. 457, 17 L. R. A. N. S. 162; L. D. Wilcutt & Sons Co. v Driscoll, 200 Mass. 100, 85 N. E. 897; Branson v Industrial

Workers of the World, (Nev.) 95 Pac. 354; American Steel & Wire Co. v Wire Drawers' etc. Union, 90 Fed. 598. And see Rocky Mountain Bell Tel. Co. v Montana Federation of Labor, 156 Fed. 810; Hopkins v Oxley Stave Co., 83 Fed. 912, 28 C. C. A. 99; American Federation of Labor v Bucks Stove and Range Co., (D. C. App.) 37 Wash. L. Rep. 154, 163.

¹⁷ See Reynolds v Davis, 198 Mass. 294, 84 N. E. 457, 17 L. R. A. N. S. 162; Pickett v Walsh, 192 Mass. 592, 78 N. E. 753, 116 Am. St. Rep. 272, 6 L. R. A. N. S. 1067.

¹⁸ L. D. Wilcutt & Sons Co. v Driscoll, 200 Mass. 110, 85 N. E. 897.

¹⁹ Reynolds v Davis, 198 Mass. 294, 84 N. E. 457, 17 L. R. A. N. S. 162.

²⁰ American Steel & Wire Co. v Wire Drawers' etc. Union, 90 Fed. 598.

shall, in its discretion and by its rules prescribe,²¹ and it has been said that such amendment may be made on appeal if the individual defendants were proper representatives of the members and such members would suffer no damage from the bill being so amended.²² It is not essential that the members suing or sued, should be officers of the union. The required represented capacity does not necessarily reside in some official or authorized representative quality, attaching by reason of the action of the union itself in conferring it.²³ In the application of this principle it has been held that in suits to enjoin a labor organization from the commission of unlawful acts in furtherance of a strike, the leaders of the strike may be made defendants as representative of the organization, no matter what their official relation to the organization may be.²⁴

§ 218. —In actions at law.

The equity rule discussed in the preceding section has no application in actions at law in the absence of statutes so providing.²⁵ It has recently been held, however, in one of the Code States, that a statute adopting the equity rule makes such rule applicable to all proceedings whether they are of a legal or equitable nature. It was said that under the Code provision, "There is but one form of civil action, and legal and equitable distinctions, so far as practice is concerned, are largely, if not entirely done away with. To hold that the defendant organizations (labor unions) cannot be sued without including all members, which are so numerous, scattered and difficult to ascertain, might cause such hardship and delay as would amount to a denial of justice. It is hard to conceive of any case to which the statute would be more applicable in its provisions than where the parties are numerous one or more may sue or defend for all."²⁶

²¹ *American Steel & Wire v Wire Drawers' etc. Union*, 90 Fed. 598.

²² *Pickett v Walsh*, 192 Mass. 572, 78 N. E. 753, 6 L. R. A. N. S. 1067, 116 Am. St. Rep. 272.

²³ *American Steel & Wire Co. v Wire Drawers' etc. Union*, 90 Fed. 598, in which it was said: "The chief officers, for purposes of suits, represent a corporation, generally, and they may so represent a voluntary association; but there is no technical

requirement that process shall be served on them exclusively or generally, though by a natural analogy that would be a convenient method to adopt in suing a voluntary association or in bringing a suit for it."

²⁴ *American Steel & Wire Co. v Wire Drawers' etc. Union*, 90 Fed. 598.

²⁵ *Branson v Industrial Workers of the World*, (Nev.) 85 Pac. 354.

²⁶ *Branson v Industrial Workers of the World*, (Nev.) 95 Pac. 354.

§ 219. Statutes authorizing suits in names of officers.

In addition to statutes of the character already considered, there are provisions in some jurisdictions which authorize the bringing of suits by or against unincorporated labor unions, in the names of the officers thereof or of some designated officer,²⁷ or officers.²⁸ If suit is not brought in accordance with these provisions, all the members of the union must be joined. They do not authorize suits by or against the union in its common name, or against any other officers than those designated.²⁹

²⁷ *Tracy v Banker*, 170 Mass 266, 49 N. E. 308, 39 L. R. A. 508.

²⁸ *Master Horseshoers' Ass'n v Quinlivan*, 82 N. Y. Suppl. 288, 83 App. D. S. 459; *Thomas Ruwell & Sons v Stampers', etc. Union*, 107 N. Y.

Suppl. 303; *Hanke v Cigar Makers' International Union*, 58 N. Y. Suppl. 412, 27 Misc. 529.

²⁹ *Hanke v Cigar Makers' International Union*, 58 N. Y. Suppl. 412, 27 Misc. 529.

CHAPTER XVIII.

CONTEMPT.

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- § 224. Payment of money to join strike.
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§ 220. Power to punish for contempt.

The power to punish for contempt is inherent in all courts,³⁰ and in many instances punishment for contempt is the only means by which the court can enforce its lawful decrees.³¹ Its existence is essential to the preservation of order in judicial proceedings and to the enforcement of the judgments, orders and writs of the courts, and consequently to the due administration of justice.³² It is necessarily implied from the power of the court to make an order,³³ and is “part of the inconvenience to which a citizen is subject in a community governed by law and regulated by orderly procedure.”³⁴ It subserves at once the double office of protecting the dignity and authority of the tribunal and aiding in the enforcement of civil remedies and may be exerted in either civil or criminal cases, or independently of either, and either solely for the preservation of the court’s authority, or in aid of the rights of the litigant or for both those purposes combined.³⁵ “From the earliest history of jurisprudence,” it is said, “this power has been regarded as a necessary incident and attribute of a court, without which it could no more exist than without a judge. A court without the power effectually to protect itself against the assault of the lawless, or to enforce its orders, judgments, or decrees, against the reculant parties before it, would be a disgrace to the legislation and a stigma upon the age which invented it.”³⁶

³⁰ *Bessette v W. B. Conkey Co.*, 194 U. S. 324, 24 Sup. Ct. 665, 48 L. ed. 997. *Boyle v London Guarantee Co.*, 204 U. S. 599, 607, 27 Sup. Ct. 313, 51 L. ed. 641; *Hammond Lumber Co. v Sailors’ Union of the Pacific*, 167 Fed. 809; *Gompers v Buck’s Stove & Range Co.*, (D. C. App.) 37 Wash. Law Rep. 706.

³¹ *Gompers v Buck’s Stove & Range Co.*, (D. C. App.) 37 Wash. Law Rep. 706.

³² *Ex parte Robinson*, 19 Wall (U. S.) 505, 510.

³³ *In Re Debs*, 158 U. S. 564, 599, 15 Sup. Ct. 900, 39 L. ed. 1092.

³⁴ *Doyle v London Guarantee Co.*, 204 U. S. 599, 607, 27 Sup. Ct. 313, 51 L. ed. 641.

³⁵ *Hammond Lumber Co. v Sailors’ Union of the Pacific*, 167 Fed. 809.

³⁶ *Watson v Williams*, 36 Miss. 331, 341; and see *Gompers v Buck’s Stove & Range Co.*, (D. C. App.) 37 Wash. Law Rep. 706, 712, in which it was said: “With a proper exercise of this power, the purpose of its creation and organization is made effective; without

§ 221. What constitutes contempt.—Introductory statement.

The question as to what constitutes contempt will be considered in two aspects: 1st. Acts in disobedience of injunctions and restraining orders. 2nd. Interference with property in the hands of receivers.

§ 222. —Disobedience of injunction.—In general.

To render a person liable for contempt for violation of an injunction the acts complained of must be clearly forbidden by the injunction. Whether or not particular acts constitute a violation of an injunction depends largely on its special provisions.³⁷ It may be observed, however, that contempt may be committed by innuendo and insinuation. It may consist in maliciously saying or doing anything that will have a tendency to induce others to disregard the authority of the court. Even though publications and utterances, when literally interpreted, may not constitute a technical contempt, yet if the manifest intent of the defendants was not only to disobey the order of the court themselves, but also to inspire their followers to do likewise, it may be regarded as a punishable contempt.³⁸

§ 223. — —Preventing employes or others from working or accepting employment.

An injunction prohibiting interference with the management of complainant's mines by threats, menaces or intimidation to prevent employes from going to and from the mines, is violated where defendants on whom the injunction was served, together with a large crowd of strikers marched with music and banners past the mines and the homes of the employes in such mine and also marched on the public highway for several days between the homes of such employes and the mine, stopping in the front of the mine on each side of the road which the employes crossed in going to and from the

it, it would become an impotent and a useless adjunct of government. If a citizen, though he may honestly believe that his rights have been invaded, may elect when, and to what extent, he will obey the mandates of the court and the requirements of the law as interpreted by the court, instead of pursuing the orderly course of appeal,

not only the courts, but government itself, would become powerless, and society would soon be reduced to a state of anarchy.”

³⁷ See *Injunctions* 22 Cyc. p. 1015, and cases cited.

³⁸ *Gompers v Buck's Stove & Range Co.*, (D. C. App.) 37 Wash. Law Rep. 706, 711.

mine at the time at which it was customary for them to do so, such acts resulting in the intimidation of many of the employes and the preventing of them from going to work."³⁹ So also an injunction prohibiting a labor union from interfering with complainants' business and from preventing employes or others by intimidation from doing work or accepting employment is violated where such union which has ordered a strike, engages through its officers and members in threatening some of complainants' employes and assaulting others.⁴⁰ And the following of an employe of complainant escorted by a policeman through a crowd, by members of a union, the leader of whom said to such employe: "I see you are still doing your dirty work," is in violation of an injunction against unlawfully interfering with, intimidating or threatening complainants' employes with intent to cause them to leave complainant's employ, or to interfere with or obstruct complainant's business.⁴¹ Likewise, where an injunction has been awarded forbidding the continuance by striking workmen of a union of acts of intimidation to prevent others from working for their former employer, and the strikers continue such acts after the issuance of the injunction, the officers of the union will also be deemed guilty of a violation of the injunction, if they countenanced the acts of intimidation, and refrained from using the means of preventing those acts which they possessed so far as good faith would suggest.⁴² The fact of reading the injunction order at meetings of the members of the union, it was said, was not of itself the measure of the duty of the officers in the matter of obeying the order of the court.⁴³ On the other hand, it has been held that an injunction restraining defendants from intimidating complainant's employes and those seeking employment of him, cannot be deemed to have been violated where the only acts shown were that two men who approached complainant's works,

³⁹ *Mackall v Ratchford*, 82 Fed. 41; See also *Lake Erie, etc. R. Co. v Bailey*, 61 Fed. 494; *Allis-Chalmers Co. v Iron Moulders' Union*, 150 Fed. 155.

⁴⁰ *Franklin Union v People*, 220 Ill. 335, 77 N. E. 176, 110 Am. St. Rep. 248, 4 L. R. A. N. S. 1001. See also *Stearns v Marr*, 84 N. Y. Suppl. 36, 41 Misc. 252.

⁴¹ *Ideal Mfg. Co. v Ludwig*, 149

Mich. 133, 112 N. W. 723. To the same see *Ideal Mfg. Co. v Ludwig*, 149 Mich. 699, 113 S. W. 600.

⁴² *Typothetae of the City of New York v Typographical Union No. 6*, 117 N. Y. Suppl. 70.

⁴³ *Typothetae of the City of New York v Typographical Union No. 6*, 117 N. Y. Suppl. 70.

were asked whether they were going to work for complainant and were accompanied by defendants to the gates but were permitted to enter without molestation; that when they came from the works they were followed to the house of a third person with whom some of the strikers offered to fight.⁴³ Nor is such injunction violated by defendants getting on a train on which complainant's employes were bringing workmen for complainant, and inducing them not to go by telling them they ought not to go to work for complainant because a strike was on and by falsely stating that complainant would not let them go inside the works.⁴⁵

§ 224. — —Payment of money to join strike.

In an unreported decision of an Ohio Court it was held that payment by strikers of money to employees of the company against which the strike is in operation to induce them to join the strike is not a violation of an injunction prohibiting "unlawful" persuasion and does not render them liable as for a contempt.⁴⁶ This decision is in line with the weight of authority which holds that the payment of money to induce others to join in a lawful strike is not unlawful.⁴⁷

§ 225. — —Picketing.

Picketing, even though peaceful, when it is intended to compel plaintiff to accede to the demands of a union and take back its members on terms dictated by the union is in violation of an injunction prohibiting the doing of any act tending or intended to compel plaintiff to operate its factory or employ or discharge workmen in

⁴³ *George Jonas Glass Co. v. Glass Blowers' Ass'n*, 64 N. J. Eq. 644, 54 Atl. 565.

⁴⁵ *George Jonas Glass Co. v. Glass Blowers' Ass'n*, 64 N. J. Eq. 644, 54 Atl. 565.

⁴⁶ *Iron Moulders' Union v. Greenberg*. Compare *Titusville Iron Co. v. Quinn*, 13 Pa. Dist. Rep. 416, in which it was held that paying a consideration to an employe of plaintiff company, on condition that he refuse to go to work for it after having engaged to do so, offering to pay other employes on similar conditions and seeking to procure others who had been so engaged

to either cease working or decline to begin under their contract of employment is in violation of an injunction against hindering, obstructing and interfering with the management and operation of plaintiff's manufactory and its business and using any illegal inducements or persuasion to cause said workmen to leave plaintiff's employment, and from doing any act, matter or thing, which will in any manner interfere or tend to interfere with the lawful and proper running of plaintiff's manufactory.

⁴⁷ See *Supra* Chapter V, *Acts in Furtherance of Strike*, Section 65.

the manner or upon the terms demanded by the union.⁴⁸ So it has been held that while, in itself there may be no harm in one person or even two or more, loitering or standing in the neighborhood of a factory or other place, nevertheless, this act, in itself, associated with the facts that there is a lockout or strike, that the men who loiter and patrol and picket are employees who have been discharged, that they are members of the union whose purpose it is to stop the operation of plaintiff's factories as far as they can, until the men in their employ have been discharged, or have joined the union, violates an injunction against picketing plaintiff's factory or intimidating his employees.⁴⁹

§ 226. — —Procuring discharge of employees.

Procuring the discharge of members of a union from employment for refusal to join another union, is in violation of an injunction against interference with the employment of such persons and punishable as a contempt.⁵⁰

§ 227. — —Fining members to prevent them from working with members of another union.

An injunction prohibiting a labor union from interfering with members of another union, threatening their employers or would-be employers with the hostility of labor unions and from obstructing them in obtaining or retaining employment as musicians, is violated where the officers of the union against which the injunction was issued, by means of the imposition of fines, caused one of its members, a musical director of a theatre, where members of the other union were employed to quit his employment at such theatre, the purpose of such acts being to cause the discharge of the members of the other union from employment. "Acts of this character by appellant cannot be justified under cover of a pretense that they are done merely to discipline its own members, when as here disclosed beyond legitimate controversy, the real purpose of appellant was to drive appellees out of employment, and to this end to injure their employers." "The fact that such fine imposed upon its own members might be entirely lawful and just, when so imposed

⁴⁸ *Vilter Mfg. Co. v Humphries*, 132 Wis. 587, 112 N. W. 1095, 13 L. R. A. N. S. 591.

⁴⁹ *Brunsman v Atherton*, 12 Ohio Dec. N. P. 553.

⁵⁰ *Swaine v Blackmore*, 75 Mo. App. 74.

for a lawful purpose, cannot justify its infliction for a wrongful purpose in violation of a restraining order of court.’⁵¹

§ 228. — —Threats of fine to prevent members from working for “unfair” firm.

In another case a temporary injunction was awarded restraining defendants from “interfering with the complainant’s business by obstructing, annoying, intimidating or interfering with any person or persons who now are or may hereafter be in their employment.” The ground of the petition was intimidation of one of complainant’s employes by threats of fining him for working for complainant. At the hearing the following facts were shown. One of the defendants was president and the other, the business agent of a council of delegates of several locals, and the order had been duly served on them. A business agent of one of the locals told one of complainants’ employes that complainant was “unfair” and ordered him to quit work, and he was subsequently notified by the secretary of the council that he was charged with a breach of the council’s rules in working for an “unfair” firm after orders to quit, and that he had by this conduct rendered himself amenable to a fine. At a meeting of the council which the workman was notified to attend, one of the defendants presided and the other acted as temporary secretary. On this showing the trial court found that defendants were responsible for the notice sent to the workmen, adjudged them in contempt and imposed fines on them. On appeal it was held that the evidence failed to show that defendants were responsible either directly or indirectly for sending the notice, and ordered the fines to be restored to them.⁵²

§ 229. — —Maintaining boycott.

A temporary restraining order enjoining defendants from boycotting complainant and from giving notice verbally or in writing to any one to decline to purchase building materials from complainant, under threats that if such purchases are made they will cause persons in the employ of those thus notified to withdraw from their service, is violated by the sending out of circulars, to builders and contractors, containing a list—from which complainant’s name

⁵¹ Chicago Federation of Musicians
v Musicians’ Union of North America,
139 Ill. App. 65.

⁵² Casson v McIntosh, 199 Mass. 443,
85 N. E. 529.

was omitted—of dealers in building material who were working under an agreement with the union, and a notice that any material not constructed under strict union conditions would not be handled by members of the union, and by attempting to induce contractors and builders to enter into a contract not to use any material from any but those mentioned in the list. Nor can it be urged in defense that verbal notice was given to the contractors and builders that owing to the injunction, complainant was not included among the “unfair” firms, and that dealings with it would not be punished with a refusal to handle its material by union men, where it was shown that this fact was never mentioned to any contractor or builder unless he made special inquiry on the subject.⁵³ A further illustration of boycotts constituting contempt is the following: An injunction was granted restraining defendants and their agents from further maintaining a boycott against complainants and from executing the threat contained in the notice served upon customers of complainants preventing or prohibiting workmen, members of unions from working on buildings for which complainants have furnished work and materials and from any and all unlawful measures in the nature of a boycott or similar unwarrantable interference with complainants’ business; thereafter one of the defendants, a district council of a labor union, for the purpose of coercing complainants into acceptance of the rules of the union, instructed its business agent to “call off” the men at work on a certain building which he did do for the purpose above stated and because material furnished by complainants was used in its construction and by reason thereof the contractors for the construction of the building who would otherwise have dealt with complainants were deterred from doing so to his pecuniary loss. On appeal by the contractors to the aforesaid district council that body refused to take any action to terminate the strike unless complainant would consent to be bound by the rules of the union and decided and so reported to the contractors that the building in question “was still to go on the unfair list.” These acts were held to constitute a flagrant violation of the injunction by the district council and its agent and authorized an attachment for contempt against such agent and against the president and such members of the council as were present at the meeting at which a refusal to ter-

⁵³ *Huttig Sash & Door Co. v Fuelle*, 143 Fed. 363.

minate the strike was given.⁵⁴ So in a case of great notoriety, a judgment of the Supreme Court of Columbia, convicting three labor leaders of contempt in violating a boycott injunction was affirmed by the court of appeals (Justice Shephard dissenting). The injunction ordered that the defendants, individually and as representatives of the American Federation of Labor, their agents, servants, and confederates are enjoined from combining to boycott complainant's product or business, and from threatening or declaring any boycott against said business or product, and from aiding, abetting or assisting in any such boycott, and from directly or indirectly threatening, coercing, or intimidating any person or persons from buying, selling, or otherwise dealing in complainant's product, and from printing the complainant, its business, or product in the "We Don't Patronize" or "Unfair" list of defendants in furtherance of any boycott against complainants' business or product, and from referring, either in print or otherwise, to complainant, its business, or products, as in said "We Don't Patronize" or "Unfair" list in furtherance of any such boycott. It was found on the facts shown that the defendants, Gompers and Morrison, after the injunction became effective, continued to circulate through the American Federationist, the "Unfair" or "We Don't Patronize" list with complainant's name thereon, as published in previous editions of that paper. It was also found that the defendants, Gompers and Morrison, published and circulated through the American Federationist, articles to the following effect: "with all due respect to the court, it is impossible for us to see how we can comply with all the terms of this injunction * * * This injunction cannot compel union men or their friends to buy or not to buy the Buck's stoves and ranges. It is an exemplification of the saying that 'You can lead a horse to water but you can't make him drink,' and more than likely these men of organized labor and their friends will continue to exercise their rights to purchase or not to purchase the Buck's stoves and ranges."

"The publication of the Buck's Stove and Range Co. on the "We Don't Patronize" list of the American Federation of Labor is only an incident in the history of the case. These stoves might have been left severely alone by purchasers if they had never been mentioned on that list. It is not the matter of removing that firm from

⁵⁴ *Patterson v Building Trades' Council*, 14 Pa. Dist. Rep. 843.

the list against which we primarily protest, it is this injunction invading the freedom of the press."

"The temporary injunction issued by Justice Gould, of the Court of Equity, of the District of Columbia, in the Van Cleave- Buck's Stove and Range Company of St. Louis against the American Federation of Labor, its officers and all others, has been made permanent. The case will now be carried to the Court of Appeals of the District of Columbia. It should be borne in mind that there is no law, aye, not even a court decision, compelling union men or their friends to buy a Buck's stove or range. No, not even to buy a Loewe hat."

"Bear in mind that an injunction issued by a court in no way compels labor or labor's friends to buy the product of the Van Cleave Buck's Stove and Range Company of St. Louis."

"Fellow workers be true and helpful to yourselves and to each other. Remember that united effort in cause of right and justice must triumph."

It was also found that defendant Gompers, in speeches before assemblages of workingmen, had made the following statements: "I might say just parenthetically about the hatters' case, that you are not now permitted to boycott the Loewe hats, but I want to call your attention to the fact that there is no law compelling you to wear a Loewe hat. That applies equally to Mr. Van Cleave's stoves and ranges. And by the way, I don't know why you should buy any of that sort of stuff. I won't; but that is a matter to which we can refer more particularly in our organizations."

"Of course, in the case of the Buck's Stove and Range Company, if I told you that the Buck's Stove and Range Company was still unfair, when I got back to Washington to-morrow, or some place where they say people play checkers with their noses—well, as I say, I am not prepared to tell you that these things are unfair. But there is no law, no court decision that compels you to buy them, nor does any law compel you to buy anything without the union label."

The judgment of the lower court convicting these defendants of contempt was affirmed. It was said, "Contempt may be committed by innuendo and insinuation. It may consist in maliciously saying or doing anything that will have a tendency to induce others to disregard the authority of the court. While the publications and utterances before us may not, when literally interpreted, constitute

a technical contempt, yet if the manifest intent of the defendants was not only to disobey the order of the court themselves, but also to inspire their followers to do likewise, it may be regarded as a punishable contempt. We think it is this sort of offense of which the defendants are here guilty. * * * "We are convinced that the acts charged were committed by the defendants for the express purpose of nullifying the order of the court, in the belief that they were technically avoiding the charge of contempt. The acts of these defendants, taken as a whole, can produce in the mind of any reasonable person but one impression—a concerted, well-planned effort to encourage the membership of the American Federation of Labor and their friends to disregard and disobey the orders of the court, and to create among their followers and their sympathizers, a lack of respect for the authority and dignity of the court."⁵⁵ With respect to defendant Mitchell, the lower court found that he presided over and took part in the deliberations of a convention of mine-workers after the injunction had become effective, at which a resolution was adopted placing complainant's product on the "un-fair" list, and fining any member of the organization five dollars for purchasing a stove manufactured by complainant; and providing that for non-payment of the fine, expulsion from the order should be imposed as a penalty. The judgment of the lower court convicting defendant of contempt was sustained. It was said: "The wilful participation of the defendant being established, the act charged constituted a separate and complete offense, committed in open and brazen disobedience of the express commands of the court."⁵⁶

§ 230. — — Non-compliance with injunction commanding performance of duties incident to employment.

Where an injunction has been issued, mandatory in form commanding employes of a railroad company to perform the duties for which they were employed, they may, without rendering themselves liable for contempt, avoid obedience to the injunction by actually ceasing to be employes of the company. This is so for the reason that courts cannot enforce the performance of personal service

⁵⁵ *Gompers v Buck's Stove & Range Co.*, (D. C. App.) 37 Wash. Law Rep. 706, 711 (affirming 36 Wash. Law Rep. 822).

⁵⁶ *Gompers v Buck's Stove & Range Co.*, (D. C. App.) 37 Wash. Law Rep. 706, 711 (affirming 36 Wash. Law Rep. 822).

against either employer or employee.⁵⁷ If, however, they continue in the service and refuse to perform the duties incident thereto, they are punishable as for contempt.⁵⁸ This rule was applied in the case of a locomotive engineer who refused while on duty to attach to his train a car from a connecting interstate carrier against which a boycott had been declared, in disobedience of a mandatory injunction restraining officers and employes of the company for which he worked from refusing to haul cars or freight of a connecting carrier in violation of the Interstate Commerce Act.⁵⁹

§ 231. — Physical obstruction of premises, or seizure of property.

If an injunction prohibits interference in any wise with any person delivering or hauling plaintiff's product, the obstruction of a passageway leading to plaintiff's factory by placing a wagon across it, which prevents the passage in that direction of a horse and wagon sent out by plaintiff,⁶⁰ or the forcible stopping of a team to prevent its egress from plaintiff's factory,⁶¹ is a violation thereof, rendering those participating in such acts punishable for contempt. So also where members of a labor union combine and confederate together to seize the property of a railroad company, in violation of a restraining order they are punishable for contempt.⁶²

§ 232. — Denunciation of judge granting injunction.

Denunciation of the official action of a judge in granting an injunction in a labor dispute and the application to him personally of opprobrious and abusive epithets is a contempt of court.⁶³

§ 233. Interference with property in hands of receiver. — Introductory statement.

It is well settled law that whoever unlawfully interferes with property in the possession of a court, or with officers and agents of the court in the full and complete management of property in its

⁵⁷ Toledo, etc. R. Co. v Pennsylvania Co., 54 Fed. 730, 19 L. R. A. 387, 5 Inters. Com. Rep. 522; Toledo, etc. R. Co. v Pennsylvania Co., 54 Fed. 746.

⁵⁸ Toledo, etc. R. Co. v Pennsylvania Co., 54 Fed. 746.

⁵⁹ Toledo, etc. R. Co. v Pennsylvania Co., 54 Fed. 746 (affirmed in 22 U. S. App. 561, which is affirmed in 166 U. S. 548, 17 Sup. Ct. 658, 41 L. ed.

1110).

⁶⁰ Hoster Brewing Co. v Giblin, 14 Ohio Dec. N. P. 305.

⁶¹ Hoster Brewing Co. v Giblin, 14 Ohio Dec. N. P. 305.

⁶² Lake Erie, etc. R. Co. v Bailey, 61 Fed. 494.

⁶³ United States v Haggerty, 116 Fed. 510; United States v Gehr, 116 Fed. 520.

custody, is guilty of a contempt of court.⁶⁴ Such acts are regarded as contempt of the authority of the court not because it is in violation of any direct express command against the person offending, but because it is in an unjustifiable interference with the administration of justice and tends to obstruct the court in the execution of its powers and the maintenance of its authority.⁶⁵ Receivers are sworn officers of the court, and their agents and employes in carrying on the business which is in the receivers' charge are *pro hac vice*, the officers of the court. As such officers they are responsible to the court for their conduct, and if they wilfully injure the property, or endanger it, or seek to cripple its operation in the hands of the receivers, they will be made to answer therefor.⁶⁶ Courts will be very prompt to punish men who interfere with receivers in the custody and control of the property committed to them by law, because any one engaged in employment under them can have ample redress by applying to the court with respect to any supposed grievances.⁶⁷ The court is at all times open to the employe to listen to his complaint, and to redress it, if it should appear to be well-founded. Upon such application the receivers would be bound to obey the order of the court in the premises.⁶⁸

§ 234. — — Strikes or calling of strikes.

As regards specific acts amounting to contempt, it is held that the mere fact that employes of a receiver in charge of a railroad go on strike does not render them liable as for contempt.⁶⁹ Thus where they are working under a general contract of employment which does not limit the exercise of the right to quit the service, they may without committing any unlawful act or putting themselves in contempt of court, quit the service by concerted action, on the adoption by the receiver of a reduced scale of wages. This is so although they may have so acted in the firm belief and ex-

⁶⁴ *In re Higgins*, 27 Fed. 444; *In re Doolittle*, 23 Fed. 544; *United States v Kane*, 23 Fed. 748; *Thomas v Cincinnati*, etc. R. Co. 62 Fed. 803, 817, 4 Inters. Com. Rep. 788; *Secor v Toledo*, etc. R. Co. 7 Biss, 513, Fed. Cas. 12, 605; *United States v Debs*, 64 Fed. 723; *In re Wabash R. Co.* 24 Fed. 217; *United States v Weber*, 114 Fed. 950; *In re Reese*, 107 Fed. 942.

⁶⁵ *In Re Reese*, 107 Fed. 942, 947.

⁶⁶ *In Re Higgins*, 27 Fed. 443; *Farmers' Loan & Trust Co., Northern Pac. R. Co.*, 60 Fed. 803, 811.

⁶⁷ *In Re Doolittle*, 23 Fed. 544; *U. S. v Kane*, 23 Fed. 748.

⁶⁸ *Farmers' Loan & Trust Co. v Northern Pac. R. Co.*, 60 Fed. 803, 813.

⁶⁹ *In Re Doolittle*, 23 Fed. 544.

pectation that a simultaneous quitting without notice would temporarily inconvenience the receivers and the public. If, in good faith and peaceably, they exercise their right of quitting the service, intending thereby only to better their condition by securing such wages as they deem just, but not to injure or interfere with the free action of others, they cannot be legally charged with any loss to the trust property resulting from their cessation of work in consequence of the refusal of the receivers to accede to the terms upon which they were willing to remain in the service. Such a loss, under the circumstances stated, would be incidental to the situation, and would not be attributed to employes exercising lawful rights in orderly ways.⁷⁰ Similarly a strike for the purpose of obtaining better terms of employment is not unlawful, nor a contempt of court;⁷¹ and so for obvious reasons, the ordering of a strike by officers of a labor organization to which the employes belong, does not amount to contempt, where such officers are vested with the power to take such action, and the order is based on the dissatisfaction of the employes with the terms of employment.⁷² On the other hand the inducing of employes of a receiver who are not dissatisfied with the terms of their employment to quit the service for the purpose of inflicting injury for which damages would be recoverable is a contempt of court.⁷³

§ 235. — —Inducing other employes to join in strike.

Where employes of a receiver have in concert quit their employment because of dissatisfaction with the terms thereof, they may, without committing a contempt, use peaceable persuasion and argument for the purpose of inducing other employes in the same service to join in the strike and thus strengthen their cause.⁷⁴ This, however, is as far as they can lawfully go. They may not resort to threats or violence to induce other employes to quit work.⁷⁵ And, indeed, to render them liable for a contempt, no actual violence, or

⁷⁰ *Arthur v Oakes*, 63 Fed. 310, 321, 11 C. C. A. 1209, 25 L. R. A. 414, 4 Inters. Com. Rep. 744.

⁷¹ *Thomas v Cincinnati, etc. R. Co.* 62 Fed. 803, 4 Inters. Com. Rep. 788; *United States v Kane*, 23 Fed. 748.

⁷² *Thomas v Cincinnati, etc. R. Co.*, 62 Fed. 803, 4 Inters. Com. Rep. 788.

⁷³ *Thomas v Cincinnati, etc. R. Co.* 62 Fed. 803, 4 Inters. Com. Rep. 788; see also *In Re Higgins*, 27 Fed. 443; *United States v Weber*, 114 Fed. 950.

⁷⁴ *United States v Kane*, 23 Fed. 748.

⁷⁵ *United States v Kane*, 23 Fed. 748; *In Re Doolittle*, 23 Fed. 544; *In Re Higgins*, 27 Fed. 443.

overt threats are necessary. It is immaterial whether the unlawful interference comes in the way of actual violence or intimidation.⁷⁶ A request to quit work if accompanied by such a demonstration of force, and attitude as intimidates the employees and constrains them to quit because they feel compelled as prudent men to do so, constitutes a contempt.⁷⁷ What is here said applies with equal force to striking employees of a railroad company who attempt to prevent the employees of a receiver of another railroad from working by the means heretofore shown to be unlawful.⁷⁸

§ 236. — — **Advising intimidation of employees.**

An order prohibiting officers of a union designated by name from any interference with the employees of receivers so as to affect the

⁷⁶ *In Re Higgins*, 27 Fed. 443; *United States v Kane*, 23 Fed. 748.

⁷⁷ *United States v Kane*, 23 Fed. 748. The court aptly illustrates this principle as follows: Supposing half a dozen men stop a coach, with revolvers in their hands and one man asks the passengers politely to step out and pass over their valuables; and they step out and pass over their valuables; and supposing those men should be put on trial before any court for robbery, would you not despise a judge that would say: "Why, there was no violence, there were no threats; there was simply a request to these passengers to hand over their valuables, and they handed them over; it was simply a request and a loan of their valuables?" Would not the common sense of every man say that that request, no matter how politely it was expressed was a request backed by a demonstration of force that was really intimidation and made the offense robbery? See also in this connection *In Re Wabash R. Co.*, 24 Fed. 217. In this case the following notices sent out by one signing himself "chairman" of the employees of a company in the hands of a receiver and dated "Office

of Local Committee," were held to contain an implied threat and even an intimidation of the employees constituting a contempt of court;" S. M. Nugent, Foreman of Lathers. You are requested to stay away from the shop until the present difficulty is settled. Your compliance with this will command the protection of the Wabash Employees. But in no case are you to consider this an intimidation." "To W. P. Sie: You are requested to stay away from the shops until this matter is settled. By your compliance with this request your action will be sustained by the Wabash employees to the utmost of their power. But in no case are you to consider this an intimidation. Having sent a similar notice to other foremen the committee consider it wise to give you an opportunity to establish yourself for or against." The court said: The statement in these notices that they are not to be taken as intimidations go to show beyond a doubt that the writer knew he was violating the law, and by this subterfuge sought to escape its penalties.

⁷⁸ *Secor v Toledo, etc. R. Co.*, 7 Biss. 573, Fed. Cas. 12, 605.

conduct of the business of the receivers, is violated where after arrest they speak to a crowd of union men and advise them to continue their work, the work in which the union were then engaged being in part, the intimidation of union men who wished to work.⁷⁹

§ 237. — Physical injury to property.

The obstruction by striking employes of a railroad company not in the hands of a receiver, of the operation of another railroad in the hands of a receiver, by blocking tracks, disabling engines or the commission of similar acts is a punishable contempt of court.⁸⁰

§ 238. Who are punishable for contempt.—Parties to suit for injunction.

Those against whom an injunction order has been issued are bound not only to abstain from violating it in person, but also to endeavor in good faith to prevent its violation by their agents.⁸¹ Accordingly officers of a union to whom is intrusted the duty of selecting pickets, notwithstanding the fact that they give instructions in good faith to the pickets not to violate an injunction, may become liable for their acts in violation of such injunction by retaining them in the places to which they have been assigned after knowledge of their unlawful acts.⁸² Where, however, those against whom the injunction order has been issued, in good faith make an earnest effort to secure obedience to the injunction they will not be held in contempt for acts of their agents and employes.⁸³

§ 239. — Persons not parties but having notice of injunction.

To render a person amenable to an injunction or restraining order, it is neither necessary that he should have been a party to the suit in which the injunction issued, nor to have actually have been served with a copy of it, so long as he appears to have had actual notice,⁸⁴ and it is immaterial that by reason of his diverse

⁷⁹ *United States v Weber*, 114 Fed. 950.

⁸⁰ *In Re Doolittle*, 23 Fed. 544.

⁸¹ *Injunctions* 22 Cyc. p. 1012, and cases cited.

⁸² *Allis-Chalmers Co. v Iron Moulders' Union*, 150 Fed. 155.

⁸³ *Injunctions* 22 Cyc. p. 1013, and cases cited.

⁸⁴ *Illinois*.—*O'Brien v People*, 216 Ill. 354, 75 N. E. 108, 108 Am. St. Rep. 219; *Flannerry v People*, 127 Ill. App. 526; *Sloan v People*, 115 Ill. App. 84; *Christensen v People*, 114 Ill. App. 40.

Indiana.—*Anderson v Indianapolis Drop Forging Co.*, 34 Ind. App. 100, 72 N. E. 722.

citizenship he could not have been made a defendant therein.⁸⁵ It is entirely consonant with reason and necessary to maintain the dignity, usefulness and respect of a court, that any person whether a party to a suit or not, having knowledge that a court of competent jurisdiction has ordered certain persons to do or abstain from doing certain acts, cannot intentionally interfere to thwart the purposes of the court in making such order. Such an act, independently of its effect upon the rights of suitors in the case, is a flagrant disrespect to the court which issued it, an unwarrantable interference with, and obstruction to, the orderly and effective administration of justice and as such is, and ought to be treated as a contempt of court.⁸⁶ The theory on which many of the decisions proceed, and which it is believed is correct, is that a person not shown to have been one of the parties enjoined, is not chargeable for breach or violation of the injunction in the well-recognized sense of those terms applicable to parties, but he is bound, alike with other members of the public, to observe its restrictions when known, to the extent that he must not aid or abet its violation by

New York.—Thomas Russell & Sons v Stampers', etc. Union, 107 N. Y. Supl. 303, 57 Misc. 96.

Pennsylvania.—Titusville Iron Co. v Quinn, 13 Pa. Dist. Rep. 416; Morietta Casting Co. v Thuma, 28 Pa. Co. Ct. 248; Long v Bricklayers' & Masons' International Union, 17 Pa. Dist. Rep. 784.

United States.—Ex parte Lennon, 166 U. S. 548, 17 Sup. Ct. 658, 41 L. ed. 1110; Allis-Chalmers Co. v Iron Moulders' Union, 150 Fed. 155; Seattle Brewing & Malting Co. v Hansen, 144 Fed. 1011; Huttig Sash & Door Co. v Fuelle, 143 Fed. 363; Employers' Teaming Co. v Teamsters' Joint Council, 141 Fed. 679; Chisholm v Caines, 121 Fed. 397; Ex parte Richards, 117 Fed. 658; Conkey v Russell, 111 Fed. 417; United States v Sweeney, 95 Fed. 434; American Steel & Wire Co. v Wire drawers', etc. Union, 90 Fed. 598; United States v Agler, 62 Fed. 824; United States v Elliott,

64 Fed. 27; Toledo, etc. R. Co. v Pennsylvania Co., 54 Fed. 746, 19 L. R. A. 387, 5 Inters. Com. Rep. 522.

England.—Seaward v Patterson, 66 L. J. T. 267, L. R. 1 Ch. Div. 545 (affirmed in 76 L. T. 215).

⁸⁵ Conkey v Russell, 111 Fed. 417. *Effect of Rule of Court.*—The doctrine is not affected by an equity rule of court authorizing a few individuals to be sued as representative of a class but providing that the decree shall be without prejudice to the rights and claims of all absent parties. Though a suit is brought against a few individuals as representative of a class, the rule does not authorize those not made parties to disobey an injunction issued in such a suit. Its only effect is that the absent parties are not concluded by the decree but may be heard more fully by the court. American Steel & Wire Co. v Wire Drawers', etc. Union, 90 Fed. 598.

⁸⁶ In Re Reese, 107 Fed. 942.

others, nor set the known command of the court at defiance by interference with or obstruction of the administration of justice, and that the power of the court to proceed against one so offending and punish for the contemptuous conduct is inherent and indisputable." Such contempts, it has been said, are totally different offenses from those which the parties to the case commit when they disobey a direct order made in a case for the benefit of the complainant. The one is an offense against the majesty and dignity of the law. The other is a violation of the rights of a particular suitor, at whose instance and for whose protection the particular injunction order disobeyed was issued by the court.⁸⁷ There are however some decisions which apparently hold that persons not parties to the injunction suit, but who are in privity with those named in the injunction order, and with knowledge of the injunction aid and abet them in its violation, are punishable as for a violation thereof.⁸⁸ And in some cases it was held that persons dismissed from the case in a suit for injunction, will be held to have knowledge of the decree, and any action by them, in any way in conflict or in violation of the writ of injunction, will subject them to the same penalties as though they were named in the writ of injunction.⁸⁹ Whether persons not parties are to be considered as guilty of a technical violation of the injunction, or as having interfered with and obstructed the course of justice by intentionally interfering with and preventing execution of the decree of the court, the same

⁸⁷ *Garrigan v United States*, 163 Fed. 16; *Chisholm v Caines*, 121 Fed. 397; *W. B. Conkey Co. v Russell*, 111 Fed. 417; *In Re Reese*, 107 Fed. 942, 47 C. C. A. 87, 90; *Seaward v Patterson*, 66 L. T. 267, L. R. 1 Ch. Div. 545, (affirmed in 76 L. T. 215); *Injunctions* 22 Cyc. p. 1012, and cases cited.

⁸⁸ *In Re Reese*, 107 Fed. 942; 47 C. C. A. 87; and see *Seaward v Patterson*, 76 L. T. 215, in which it was said: "A motion to commit a man for a breach of an injunction, which is technically wrong is one thing; and a motion to commit a man for contempt of court, not because he is bound by the injunction by being a party to the

cause, but because he is conducting himself so as to obstruct the course of justice is another and totally different thing * * * In the one case, the party who is bound by the injunction is proceeded against for the purpose of enforcing the order of the court for the benefit of the person who got it. In the other case the court will not allow its process to be set at naught and treated with contempt."

⁸⁹ *Huttig Sash & Door Co. v Fuelle*, 143 Fed. 363; *Sloan v People*, 115 Ill. App. 84.

⁹⁰ *Pope Motor Car Co. v Keegan*, 150 Fed. 148; *Union Pac. R. Co. v Ruef*, 120 Fed. 102.

net result is reached—they are guilty of contempt. But the difference between the two acts is important, as regards the character of the proceedings which may be brought against them, the degree of evidence required, and the method and scope of a review of such proceedings, which in the latter case are criminal in their nature and in the former civil.⁹¹

§ 240. Corporations and voluntary associations.

A corporation other than a municipal corporation may be adjudged guilty of a wilful violation of an injunction and may be punished by fine.⁹² This rule applies of course to incorporated labor unions as well as to other corporations. While by reason of its impersonal nature, it cannot be arrested and imprisoned, it may be fined and the fine collected by sequestration of its property. Accordingly it has been held that an incorporated labor union, which organized a strike, furnished the money to maintain it, and moulded, shaped and conducted it through its officers from regular headquarters maintained by it, cannot escape liability for acts of violence, threats and intimidation which naturally would and did flow from the acts which it instigated its members to commit, by advising the members of the union to be orderly and obey the law, and where the acts committed are in disobedience of an injunction, it may be punished for contempt.⁹³ So a fine may be imposed on an unincorporated labor union for violating an injunction prohibiting it from committing specified acts, where it failed to make the objection in the suit for injunction that it could not be sued as such.⁹⁴

§ 241. —Agents.

Violation of an injunction, with knowledge of its existence, by an agent of a party enjoined, renders the agent liable to punish-

⁹¹ See *Infra* this chapter, sections 246, 252, 255, 256.

⁹² *Franklin Union v People*, 220 Ill. 355, 77 N. E. 176, 110 Am. St. Rep. 248, 4 L. R. A. N. S. 1001. And see *Corporations* 10 Cyc. 1235, Rapalje on Contempts Sections 1, 48; High on Injunctions, Section 1460.

⁹³ *Franklin Union v People*, 220 Ill. 355, 77 N. E. 176, 110 Am. St. Rep. 248, 4 L. R. A. N. S. 1001.

⁹⁴ *A. R. Barnes & Co. v Chicago Typographical Union*, 232 Ill. 402, 83 N. E. 932, 122 Am. St. Rep. 129, 14 L. R. A. N. S. 1150. See also *Iron Moulders' Union v Allis-Chalmers Co.*, 166 Fed. 453, 20 L. R. A. N. S. 315.

ment for contempt of court, and the order of his principal is no defense."⁹⁵

§ 242. **Matters of defense or in mitigation.**—In general.

The high character of the defendants, and the distinguished position which they have attained, among their fellowmen are matters which cannot be considered in defense or mitigation."⁹⁶ And it is of course, no defense to a proceeding for contempt that the acts complained of were committed in pursuance of orders of a labor organization to which defendant belonged."⁹⁷ So the fact that the acts charged to constitute contempt were done in pursuance of advice of counsel cannot be urged as a defense,⁹⁸ nor could this fact be urged even in mitigation, where disclosure is withheld as to what statement of facts was submitted to counsel or what advice was received. "Without such disclosure, either in the answer or the proof, the alleged advice," it was said, "neither justifies nor mitigates a wrong or error committed in pursuance of the advice, but raises, rather, a presumption that a full statement would not be advantageous."⁹⁹ Absence of any intentional disrespect to the court, while it may be considered in mitigation will not ordinarily constitute a defense. Thus if parties engage in an unlawful enterprise, and while so engaged interfere with the officers of the court in the management of a road in the hands of a receiver, they are punishable as for contempt, though no contempt was intended.¹ And so it is no defense to proceedings to punish for contempt that defendants intended no disrespect to the court and thought be-

⁹⁵ *Patterson v Building Trades' Council*, 14 Pa. Dist. 843.

⁹⁶ *Gompers v Buck's Stove & Range Co.*, (D. C. App.) 37 Wash. Law Rep. 706, 712, in which it was said: "Three distinguished citizens (Gompers, Mitchell and Morrison) leaders in a great cause for the improvement and uplift of their fellowmen, with a larger following, probably, than was ever marshalled under single leadership in any philanthropic movement, are at the bar of justice to answer the charge of disobedience of an order of a court of the United States. We are not unmindful of the high position which the

defendants have attained, but their intelligence forbids any inference or conclusion that the acts charged were committed in ignorance of their duty to the courts of their country; hence that excuse cannot be advanced with convincing force." "Such an argument might with propriety be addressed to the pardoning power, but the courts should not be biased by such considerations."

⁹⁷ See *In Re Higgins*, 27 Fed. 443.

⁹⁸ *Contempt* 9 Cyc. p. 25 and cases cited.

⁹⁹ *United States v Debs*, 64 Fed. 723.

¹ *In Re Doolittle*, 23 Fed. 544.

cause of the supposed views of the court orally expressed, as carried to them by hearsay, that they were doing nothing to subject themselves to punishment. All that can be claimed for it is a mitigation of punishment.² Where a strike is inaugurated by a labor union and it sets in motion the force which results in coercion, intimidation and violence, it cannot excuse itself for the part which it took in the conspiracy by the statement of its officers, that they advised the members of the union to be orderly and obey the law.³

§ 243. —Criminality of act charged as contempt.

Although a court of equity is without jurisdiction to punish for a crime, it may nevertheless punish for criminal acts done in disobedience of an injunction or restraining order.⁴ The same act may be a crime and a contempt of court. Thus if an assault or murder be committed in the presence of a court, the offender will be punishable both for the crime and for the contempt, and so with any other act committed in violation both of a criminal statute and of an injunction or order of court.⁵

§ 244. Error in decree or order disobeyed.

If the court has no jurisdiction to make an order, a disobedience thereof is not a contempt and is not punishable as such.⁶ Jurisdiction, however, does not depend on the rightfulness of the decision.⁷ And if the decree is merely erroneous, a disobedience thereof renders the party disobeying it liable for contempt. The defendant is bound at his peril to obey it so long as it remains in force however improvidently or erroneously granted.⁸ This rule applies with

² Atchison, etc. R. Co. v Gee, 139 Fed. 582.

³ Franklin Union v People, 220 Ill. 355, 77 N. E. 176, 110 Am. St. Rep. 248, 4 L. R. A. N. S. 1001.

⁴ Flannery v People, 127 Ill. App. 526; Lake Erie, etc. R. Co. v Bailey, 61 Fed. 494; In Re Higgins, 27 Fed. 443.

⁵ United States v Debs, 64 Fed. 723.

⁶ Bachman v Harrington, 184 N. Y. 458, 77 N. E. 657; United States v Debs, 64 Fed. 723; Neilson's Case, 131 U. S. 176, 7 Sup. Ct. 672, 33 L. ed. 118; Ex parte Fisk, 113 U. S. 713,

5 Sup. Ct. 724, 28 L. ed. 1117; Ex parte Lange, 18 Wall (U. S.) 163, 21 L. ed. 872. And see Flannery v People, 225 Ill. 62, 80 N. E. 60; State v Van Benthurysen, 34 La. Ann. 741.

⁷ O'Brien v People, 216 Ill. 354, 75 N. E. 108, 108 Am. St. Rep. 219.

⁸ Franklin Union v People, 220 Ill. 355, 77 N. E. 176, 110 Am. St. Rep. 248, 4 L. R. A. N. S. 1001; O'Brien v People, 216 Ill. 354, 75 N. E. 108, 108 Am. St. Rep. 219; A. R. Barnes & Co. v Chicago Typographical Union, 232 Ill. 402, 83 N. E. 932, 122 Am. St. Rep. 129, 14 L. R. A. N. S. 1150;

equal force to a prosecution for contempt instituted for the purpose of punishing a person for disobeying an order of the court on the ground that its authority or dignity is in question, and one which is instituted to enforce the authority of the court in the administration of justice between litigants.⁹ Thus it furnishes no justification for disobedience of an injunction or restraining order, that the court erred in granting an injunction where none should have been awarded,¹⁰ that the injunction is broader than is justified by the allegations of the bill,¹¹ that the writ of injunction was ambiguous because of the repeated use of the term "unlawful persuasion,"¹² that there was a defect of parties to the bill for injunction,¹³ that a demurrer for want of prayer for process might have been sustained if interposed,¹⁴ that one of the parties defendant to the original suit was neither a natural nor artificial person, no question as to its capacity to be sued having been raised in the original suit,¹⁵ or that the bill for injunction was filed in the name of a voluntary association instead of in the names of the

Harrington v Bachman, 184 N. Y. 458, 77 N. E. 657; *United States v Agler*, 62 Fed. 824; *United States v Debs*, 64 Fed. 723; *Flannery v People*, 127 Ill. App. 526; *Vilter Mfg. Co. v Humphreys*, 132 Wis. 587, 112 N. W. 1095, 13 L. R. A. N. S. 591; and see *Gompers v Buck's Stove & Range Co.* (D. C. App.) 37 Wash. Law Rep. 706, 712, in which it was said:—"Whether just or unjust, correct or incorrect, the mandates of its appointed agencies cannot be subjected to individual disrespect and disobedience."

⁹ *A. R. Barnes & Co. v Chicago Typographical Union*, 232 Ill. 402, 83 N. E. 932, 122 Am. St. Rep. 129, 14 L. R. A. N. S. 1150.

¹⁰ *Franklin Union v People*, 220 Ill. 355, 77 N. E. 176, 110 Am. St. Rep. 248, 4 L. R. A. N. S. 1001; *A. R. Barnes & Co. v Chicago Typographical Union*, 232 Ill. 402, 83 N. E. 932, 122 Am. St. Rep. 129, 14 L. R. A. N. S. 1150.

¹¹ *Franklin Union v People*, 220 Ill.

355, 77 N. E. 176, 110 Am. St. Rep. 248, 4 L. R. A. N. S. 1001; *Vilter Mfg. Co. v Humphreys*, 132 Wis. 587, 112 N. W. 1095, 13 L. R. A. N. S. 591.

¹² *Flannery v People*, 225 Ill. 62, 80 N. E. 60, in which it was said: "Even though the court was in error in forbidding unlawful persuasion those violating the injunction in other respects cannot be heard to question it. If the objectionable words should be stricken out of the order entirely, it would not affect its validity, there being other acts and conduct therein forbidden, and of which appellants were found guilty."

¹³ *Franklin Union v People*, 220 Ill. 355, 77 N. E. 176, 110 Am. St. Rep. 248, 4 L. R. A. N. S. 1001.

¹⁴ *United States v Agler*, 62 Fed. 824.

¹⁵ *A. R. Barnes & Co. v Chicago Typographical Union*, 232 Ill. 402, 83 N. E. 932, 122 Am. St. Rep. 129, 14 L. R. A. N. S. 1150.

members, no objection being made to the bill on that ground.¹⁶ So error in granting an injunction or in granting one broader than the averments of the bill will justify, does not deprive it of jurisdiction to act and its order directing the injunction to issue is a valid and binding order until modified or vacated or set aside upon appeal or writ of error.¹⁷ The general rule that a judgment or decree is not subject to collateral attack unless void applies as well to proceedings to punish for contempt as to other proceedings legal or equitable.¹⁸

§ 245. Measure of punishment.

The punishment to be imposed for contempt is in the discretion of the court,¹⁹ to be exercised on any information in reference to the convicted person which the court believes to be reliable,²⁰ and appellate courts are exceedingly averse to any interference with the exercise of such discretion, and will not ordinarily reverse the action of the inferior courts in such matters.²¹ The courts may impose a fine alone, or fix a definite period of imprisonment either with or without a fine.²² The object of inflicting punishment, it has been said, is only to secure present and future compliance with the orders of the court. Punishment commensurate with the crimes and misdemeanors committed in the course of the contempt, which are cognizable in a different tribunal will not be inflicted.²³

¹⁶ *Franklin Union v People*, 220 Ill. 355, 76 N. E. 176, 110 Am. St. Rep. 248, 4 L. R. A. N. S. 1001; *Flannery v People*, 225 Ill. 62, 80 N. E. 60.

¹⁷ *Franklin Union v People*, 220 Ill. 355, 76 N. E. 176, 110 Am. St. Rep. 248, 4 L. R. A. N. S. 1001; *Vilter Mfg. Co. v Humphreys*, 132 Wis. 587, 112 N. W. 1095, 13 L. R. A. N. S. 591.

¹⁸ *Franklin Union v People*, 220 Ill. 355, 76 N. E. 176, 110 Am. St. Rep. 248, 4 L. R. A. N. S. 1001; *Flannery v People*, 225 Ill. 62, 80 N. E. 60; *O'Brien v People*, 216 Ill. 354, 75 N. E. 108, 108 Am. St. Rep. 219.

¹⁹ *Thomas v Cincinnati, etc. R. Co.* 62 Fed. 803, 4 Inters. Com. Rep. 788; *In Re Higgins*, 27 Fed. 443; *Hake v People*, 230 Ill. 174, 193, 82 N. E.

561; *Flannery v People*, 127 Ill. App. 526.

²⁰ *Thomas v Cincinnati, etc. R. Co.*, 62 Fed. 803, 4 Inters. Com. Rep. 788.

²¹ *Hake v People*, 230 Ill. 174, 193, 82 N. E. 561.

²² *Hake v People*, 230 Ill. 174, 82 N. E. 561.

²³ *Thomas v Cincinnati, etc. R. Co.*, 62 Fed. 803, 4 Inters. Com. Rep. 788. See also *W. B. Conkey Co. v Russell*, 111 Fed. 417, 426, in which it was said: "Punishment ought not to be inflicted on the basis of cruelty or severity. It ought not to be inflicted for any other purpose than that of reforming and restraining the guilty party and for the purpose of furnishing an example to others who may be disposed to commit like offenses."

Nevertheless it has been held that the fact that the punishment imposed in a remedial proceeding to punish for contempt, is greater than is imposed by statutes fixing the punishment in criminal prosecutions for the same acts, does not make such punishment unconstitutional and void on the ground that it is disproportionate and excessive.²⁴ Where the court is convinced that the defendants intended no violation of its order,²⁵ or the acts of disobedience are done without violence or coercion and result in no injury to the person in whose favor the injunction was granted,²⁶ a light punishment only will be inflicted. Leniency will not be shown, however, where the acts of disobedience are flagrant or frequently repeated.²⁷ It has been held that while the act of one picket is technically the act of all, yet those members of the combination of pickets who are not shown to have taken part in specific acts of coercion, or intimidation, will be punished with a nominal fine only.²⁸ The following cases will serve as further illustrations of the degree of punishment imposed for contempt. Six months imprisonment imposed on officers of a union who in disobedience of an order in which they were named, not to interfere with the operation of property in the hands of a receiver, advised striking members to continue to intimidate non-union men who wished to work, and who stated that they knew they were violating the order.²⁹ Six months imprisonment imposed on one who after having been once arrested for violation of an injunction, continued in his original course, and repeatedly committed flagrant breaches of the order;³⁰ fine of one thousand dollars imposed on a labor union for flagrant and often repeated disobedience of an injunction;³¹ ten days in

²⁴ *Hake v People*, 230 Ill. 174, 82 N. E. 561.

²⁵ *Ex parte Richards*, 117 Fed. 658; *Mackall v Ratchford*, 82 Fed. 41. And see *Toledo, etc. R. Co. v Pennsylvania Co.* 54 Fed. 730, 745, 19 L. R. A. 357, 5 Inters. Com. Rep. 527; *In Re Doolittle*, 23 Fed. 544.

²⁶ *Vilter Mfg. Co. v Humphreys*, 132 Wis. 587, 112 N. W. 1095, 13 L. R. A. N. S. 591. And see *Allis-Chalmers Co. v Iron Moulders' Union*, 150 Fed. 155.

²⁷ *Thomas v Cincinnati, etc. R. Co.*,

62 Fed. 803, 4 Inters. Com. Rep. 788; *Franklin Union v People*, 220 Ill. 355, 77 N. E. 176, 110 Am. St. Rep. 248, 4 L. R. A. N. S. 1001; *United States v Weber*, 114 Fed. 950.

²⁸ *Allis-Chalmers Co. v Iron Moulders' Union*, 150 Fed. 155.

²⁹ *United States v Weber*, 114 Fed. 950.

³⁰ *Thomas v Cincinnati, etc. R. Co.*, 62 Fed. 803, 4 Inters. Com. Rep. 788.

³¹ *Franklin Union v People*, 220 Ill. 355, 77 N. E. 176, 110 Am. St. Rep. 248, 4 L. R. A. N. S. 1001.

jail imposed on the president of a labor union for using threatening language to an employe of the party in whose favor an injunction was awarded;³² three months imprisonment imposed for forcibly taking possession of switch and track, resisting officers, and threatening employes;³³ ninety days imprisonment imposed for intimidating employes, throwing rocks at them and severely injuring one of them;³⁴ five months imprisonment imposed for displacing a switch and derailing an engine.³⁵

§ 246. Proceedings to punish for contempt.—Nature.

Contempt proceedings are *sui generis*,³⁶ and are of two classes; those which are criminal and punitive in their nature, and those which are civil, remedial and coercive in their nature.³⁷ "It may not be always easy to classify a particular act as belonging to either of these two classes. It may partake of the characteristics of both. A significant and generally determinative feature is that the act is by one party to a suit in disobedience of a special order made in behalf of the other. Yet sometimes the disobedience may be of such a character and in such a manner as indicate a contempt of the court rather than a disregard of the rights of the adverse party."³⁸ Contempts, it has been said, cannot be wholly of the one sort or the other. The punishment of a public wrong necessarily

³² Ideal Mfg. Co. v Ludwig, 149 Mich. 133, 112 N. W. 723.

³³ In Re Higgins, 27 Fed. 443.

³⁴ In Re Higgins, 27 Fed. 443.

³⁵ In Re Higgins, 27 Fed. 443.

³⁶ Bessette v W. B. Conkey Co., 194 U. S. 324, 24 Sup. Ct. 665, 48 L. ed. 997; Hammond Lumber Co. v Sailors' Union of the Pacific, 167 Fed. 809; Gompers v Buck's Stove & Range Co., (D. C. App.) 37 Wash. Law Rep. 706.

³⁷ O'Brien v People, 216 Ill. 354, 75 N. E. 108, 108 Am. St. Rep. 219; Hake v People, 230 Ill. 174, 82 N. E. 867; People v Diedrich, 141 Ill. 665, 30 N. E. 1038; Thompson v Pennsylvania R. Co., 48 N. J. Eq. 105, 108, 21 Atl. 182; Dodd v Una, 40 N. J. Eq. 672, 5 Atl. 155; People v Court of Oyer & Terminer, 101 N. Y. 245, 4 N.

E. 259, 54 Am. Rep. 691; People v McKane, 78 Hun. 154, 28 N. Y. Suppl. 981. Patterson v Building Trades' Council, 14 Pa. Dist. Rep. 839; Hendryx v Fitzpatrick, 19 Fed. 810; Fischer v Hayes, 7 Fed. 96. And see *Infra* cases cited in subsequent notes in this section. But see Hammond Lumber Co. v Sailors' Union of the Pacific, 167 Fed. 809, in which it was said that a proceeding to punish for contempt is a criminal proceeding whether the proceeding be initiated primarily to vindicate the court's authority, or solely as a coercive or remedial measure to enforce the rights of the litigant, or for both of those purposes combined.

³⁸ Bessette v W. B. Conkey Co., 194 U. S. 324, 24 Sup. Ct. 665, 48 L. ed. 997.

operates *in terrorem* if in no other way, to conserve private right, and the enforcement of a private right through the courts in a broad sense vindicates the law of the land and generally carries with it punishment by payment of costs, if in no other way for its violation. The question is, what is the main purpose sought to be effected in instituting the contempt proceeding.³⁹ Where the primary purpose of the proceeding to punish for contempt is to vindicate public authority, the contempt is criminal.⁴⁰ A criminal contempt is directed against the power and dignity of the court and private parties have little if any interest in the proceedings for its punishment.⁴¹ Here punishment is imposed for the outrage on the majesty of the law and the authority of the court and if a fine is imposed it goes to the people.⁴² Where the contempt proceeding is against one not a party to the suit, nor named in the injunction or restraining order, and who is not charged to have been in privity with the parties to the suit, but to have acted independently in the

³⁹ *Patterson v Building Trades' Council*, 14 Pa. Dist. Rep. 839, 840. And see *In re Nevitt*, 117 Fed. 448, 54 C. C. A. 622.

⁴⁰ *O'Brien v People*, 216 Ill. 354, 75 N. E. 108, 108 Am. St. Rep. 249; *Anderson v Indianapolis Drop Forging Co.*, 34 Ind. App. 100, 72 N. E. 277; *Patterson v Building Trades' Council*, 14 Pa. Dist. Rep. 838; *Garrigan v United States*, 163 Fed. 16; *In re Nevitt*, 117 Fed. 448, 54 C. C. A. 622; *Indianapolis Water Co. v Strawboard Co.*, 75 Fed. 972; *Vilter Mfg. Co. v Humphreys*, 132 Wis. 587, 112 N. W. 1095, 13 L. R. A. N. S. 591. And see *Gompers v Buck's Stove & Range Co.*, (D. C. App.) 37 Wash. Law Rep. 706, 707, in which it was said: "Both the Federal and State Courts have generally regarded the disobedience of an injunctive order, where the order does not involve the performance of some act for the exclusive benefit of a party litigant as a criminal contempt." Compare *Enterprise F'dry Co. v Iron*

Moulders' Union, 149 Mich. 31, 112 N. W. 685, 13 L. R. A. N. S. 598, in which it was held that one who wilfully disobeys an injunction is punishable as for a criminal contempt under a statute authorizing every court of record to punish as for criminal contempt persons wilfully disobeying any order lawfully made by it whether the proceeding be instituted on the court's own motion or by a private party. *Paterson v Building Trades' Council*, 14 Pa. Dist. Rep. 1139.

⁴¹ *In re Nevitt*, 117 Fed. 448, 54 C. C. A. 622; *Bessette v W. B. Conkey Co.*, 194 U. S. 324, 24 Sup. Ct. 665, 48 L. ed. 997. And see *Gompers v Buck's Stove & Range Co.*, (D. C. App.) 37 Wash. L. Rep. 706, 708, in which it was said: "Criminal contempts consist in such disobedience of the mandates or decrees of a court as constitute a defiance of the power and authority of the court."

⁴² *Bachman v Harrington*, 184 N. Y. 458, 77 N. E. 657.

resistance of the order, the proceeding is criminal in its nature.⁴³ This is necessarily so, since no coercive or remedial relief can be had against a stranger but only a judgment punishing him for a violation of the injunction committed with a knowledge of its existence.⁴⁴ It should be regarded like misconduct in a court room or disobedience of a subpoena, as among those acts primarily directed against the power of the court.⁴⁵ So where the gravamen of a petition in a proceeding to punish for contempt is that defendants, officers of a union conspired to procure a violation of an injunction, and that at their instigation members of the union committed acts in violation of the injunction, the proceeding is criminal in its nature.⁴⁶ On the other hand, where the primary purpose of the proceeding is the enforcement of civil rights and remedies of a party to a suit, the proceeding is civil in its nature.⁴⁷ If, in the progress of a suit, a party is ordered by the court to abstain from some action which is injurious to the rights of the adverse party, and he disobeys that order, he may be guilty of contempt, but the personal injury to the party in whose favor the court has made the order gives a remedial character to the contempt proceeding.⁴⁸ While the authority of the court will be incidentally vindicated, its power has been called into exercise for the benefit of a private litigant, and not in the public interest, merely. If imprisonment is ordered, it is not as a punishment, but to the end that

⁴³ *Bessette v W. B. Conkey Co.*, 194 U. S. 324, 24 Sup. Ct. 665, 48 L. ed. 997; *Matter of Christensen Engineering Co.*, 194 U. S. 458, 24 Sup. Ct. 665, 48 L. ed. 997; *Garrigan v United States*, 163 Fed. 16; *In Re Reese*, 107 Fed. 942, 47 C. C. A. 87.

⁴⁴ *Hammond Lumber Co. v Sailors' Union of the Pacific*, 167 Fed. 809, 823.

⁴⁵ *Bessette v W. B. Conkey Co.*, 194 U. S. 324, 24 Sup. Ct. 665, 48 L. ed. 997.

⁴⁶ *Hammond Lumber Co. v Sailors' Union of the Pacific*, 149 Fed. 577.

⁴⁷ *Anderson v Indianapolis Drop Forging Co.*, 34 Ind. App. 100, 72 N. E. 277; *Bachman v Harrington*, 184

N. Y. 458, 77 N. E. 657; *Vilter Mfg. Co. v Humphries*, 132 Wis. 287, 112 N. W. 1095, 13 L. R. A. N. S. 591; *In Re Nevitt*, 117 Fed. 448, 54 C. C. A. 622; *Garrigan v United States*, 163 Fed. 16; and see *Gompers v Buck's Stove & Range Co.*, (D. C. App.) 37 Wash. Law Rep. 706, 708, in which it was said that "where the order of the court is made in a civil proceeding solely for the benefit of one of the parties litigant and is disobeyed by the other party to the suit, an order committing such party for contempt until he yields obedience is a civil proceeding."

⁴⁸ *Bessette v W. B. Conkey Co.*, 194 U. S. 324, 24 Sup. Ct. 665, 48 L. ed. 997.

the other party to the suit may obtain a remedy for the advancement of his own private interest and rights which he could not otherwise maintain,⁴⁹ and such party is the real party in interest in such proceedings.⁵⁰

§ 247. **How instituted.—Petition or affidavit.**

The proceeding to punish for contempt being summary in character, technical pleadings are not required.⁵¹ Proceedings for contempt in violating an injunction or in resisting an order of court may be instituted either by petition,⁵² or by affidavit,⁵³ the most common practice being to present to the court an affidavit setting forth the facts and circumstances constituting the alleged contempt.⁵⁴ And it has been held that where the contempt consists of a violation of an injunction which is also a violation of the criminal law, the affidavit for warrant of arrest may be made by any citizen having knowledge of the facts, and need not be made by a party to the injunction suit.⁵⁵ Whether the proceeding be brought by petition or affidavit, the charge need not be set forth with the particularity that would be required in an indictment;⁵⁶ nor is a specific bill of particulars necessary.⁵⁷ All the facts necessary to constitute the alleged contempt should be stated,⁵⁸ and a party de-

⁴⁹ *O'Brien v People*, 216 Ill. 354, 75 N. E. 108, 108 Am. St. Rep. 219.

⁵⁰ *Bessette v W. B. Conkey Co.*, 194 U. S. 324, 24 Sup. Ct. 665, 48 L. ed. 997; *In Re Nevitt*, 117 Fed. 448, 458, 54 C. C. A. 622.

⁵¹ *Hammond Lumber Co. v Sailors' Union of the Pacific*, 149 Fed. 577.

⁵² *Hake v People*, 230 Ill. 174, 32 N. E. 561; *Flannery v People*, 225 Ill. 62, 80 N. E. 60 (affirming 127, Ill. App. 526); *Hammond Lumber Co. v Sailors' Union of the Pacific*, 149 Fed. 577.

⁵³ *Hake v People*, 230 Ill. 124, 82 N. E. 561; *Flannery v People*, 225 Ill. 62, 80 N. E. 60; *Franklin Union v People*, 220 Ill. 355, 77 N. E. 176, 110 Am. St. Rep. 248, 4 L. R. A. N. S. 1001; *Hammond Lumber Co. v Sailors' Union of the Pacific*, 149 Fed. 577.

⁵⁴ *Employers' Teaming Co. v Team-*

sters' Joint Council, 141 Fed. 697, (citing *Raplje on Contempt*, Section 93).

⁵⁵ *Castner v Pocahontas Collieries Co.*, 117 Fed. 184.

⁵⁶ *Hake v People*, 230 Ill. 124, 82 N. E. 561; *Franklin Union v People*, 220 Ill. 355, 77 N. E. 176; 110 Am. St. Rep. 248; *O'Brien v People*, 216 Ill. 354, 75 N. E. 108, 108 Am. St. Rep. 219.

⁵⁷ *O'Brien v People*, 216 Ill. 354, 75 N. E. 108, 108 Am. St. Rep. 219.

⁵⁸ *Flannery v People*, 225 Ill. 62, 80 N. E. 60; *Employers' Teaming Co. v Teamsters' Joint Council*, 141 Fed. 679; *Rapalje on Contempt*, section 93; *United States v Agler*, 62 Fed. 824, holding that where the person sought to be punished for violating an injunction against an interference with interstate commerce was not a party to

fendant in a contempt proceeding cannot be found guilty of any other acts of contempt than those alleged.⁵⁹ Yet although the petition alleges that defendant has committed a civil contempt, evidence that defendant has committed a criminal contempt, is admissible where the affidavits incorporated in the petition aver facts showing a criminal contempt and furnish notice for the introduction of such facts.⁶⁰ The mere conclusion of the petition that defendant should be held for a civil contempt, should not tie the hands of the court in punishing a wilful disregard of its authority, and may be rejected as surplusage.⁶¹ Knowledge of the injunction or order out of which the alleged contempt arose should be alleged, and an averment that defendant knew or by the exercise of ordinary intelligence might have known of the issuance of the injunction is insufficient.⁶² In a civil proceeding to punish for contempt it is not necessary to set out in detail the prior orders and proceedings in the cause in which the contempt was commit-

the injunction suit, it should be alleged that either by his words or acts he was engaged in aiding the common object of the conspiracy to interrupt interstate commerce. If what he did was an independent crime, if he sought to commit some offense without having any connection with those who were engaged in the interruption of commerce, he would not be within the terms of the order, nor within the statute.

⁵⁹ *Huttig Sash & Door Co. v Fuelle*, 143 Fed. 363, 374; *In Re Reese*, 107 Fed. 942, 47 C. C. A. 87.

⁶⁰ *Garrigan v United States*, 163 Fed. 16.

⁶¹ *Employers' Teaming Co. v Teamsters' Joint Council*, 141 Fed. 679, in which it was said: "While it is doubtless true that a respondent is entitled to be advised of the charge he is to meet, it is also true that such a requirement goes rather to the facts to be established than to the kind of proceeding in which such facts are to be

reviewed by the court. The petition herein was presented in the cause pending in equity. The proceeding, while properly of a punitive nature, was also in aid of complainants in the case. It came under that class of actions which the cases *supra* hold to partake of both a punitive and a civil or remedial character. The same facts are sufficient to establish respondents' guilt in either case." Compare *In Re Reese*, 107 Fed. 942, 47 C. C. A. 87, holding that there is nothing in the petition remotely suggesting that the purpose of the proceeding is to punish defendant for a wilful resistance or disregard of the court's authority otherwise than the same is involved in violating an express order of court, alleged to have been made in the case against him. He is entitled to stand upon the accusation as made, and to defend against the charge as made, namely that he had violated the injunctive order.

⁶² *Garrigan v United States*, 163 Fed. 16.

ted. The court will take judicial notice of its own orders and records in the cause.⁶³ The fact that the petition shows that many of the facts set forth therein were obtained from defendant while testifying in another cause, furnishes no ground for quashing the proceedings, even conceding that because of statutory provisions such facts could not be used against him, it being probable that other testimony might be adduced wholly aside from that tending to his conviction for contempt or even that the same facts discovered by him might be otherwise shown.⁶⁴ So much of the petition as charges the commission of acts which are in no sense in violation of the injunction will be stricken out on motion.⁶⁵ In respect of verification it has been held that a petition in proceedings to punish for contempt, is not insufficient because the affidavit thereto which states that the affiant knows the contents thereof, states that the affiant "believes" the same to be true, especially where defendants appeared and answered and made no objection to the sufficiency of the petition.⁶⁶

§ 248. —Answer and its effect.

The general rule is well settled that in a proceeding for contempt in equity, a sworn answer, however full and unequivocal, is not conclusive.⁶⁷ The rule according to some decisions, is limited to cases where the proceedings are civil and remedial in their nature, such decisions holding that in proceedings for contempt which are criminal in their nature, the answer if sufficient to purge defendant of the alleged contempt may be taken as true and the defendant discharged,⁶⁸ but the weight of authority is to the effect that it

⁶³ *Hake v People*, 230 Ill. 174, 82 N. E. 561.

⁶⁴ *Hammond Lumber Co. v Sailors' Union of the Pacific*, 149 Fed. 577.

⁶⁵ *Hammond Lumber Co. v Sailors' Union of the Pacific*, 149 Fed. 577.

⁶⁶ *Flannery v People*, 225 Ill. 62, 80 N. E. 60.

⁶⁷ *In Re Debs*, 64 Fed. 738; *United States v Anonymous*, 21 Fed. 761; *Employer' Teaming Co. v Teamsters' Joint Council*, 141 Fed. 679; (reversed on other grounds in 163 Fed. 16); and see the following cases: *King v Vaughan*, 2 Doug. 516; *Ruth-*

erford v Metcalf, 5 Hayw. (Tenn.) 58; *Magennis v Parkhurst*, 4 N. J. Eq. 433; *State v Harper's Ferry Boat Co.*, 16 W. Va. 864; *Crook v People*, 16 Ill. 534; *Buck v Buck*, 60 Ill. 105; *Welch v People*, 30 Ill. App. 399; *Yates' Case*, 4 Johns, (N. Y.), 317; *McCredie v Senior*, 4 Paige, (N. Y.), 378, *Bank v Schermerhorn*, 9 Paige, (N. Y.), 372.

⁶⁸ *O'Brien v People*, 216 Ill. 354, 75 N. E. 108, 108 Am. St. Rep. 219; *Flannery v People*, 127 Ill. App. 526; *Christensen v People*, 114 Ill. App. 40; *Anderson v Indianapolis Drop*

applies with equal force when the proceedings are brought to vindicate the law and uphold the dignity of the court and are therefore considered criminal in their nature.⁶⁹ There never was in a court of equity, as at law, it has been said, any rule that the answer of the respondent should be taken as true and he be discharged, if he denied the attempt.⁷⁰ "As far back as Blackstone's time it was the well established rule, that the answer of a respondent, in a proceeding for contempt in equity, was not conclusive but might be traversed."⁷¹ The truth of the answer may be examined into and disproved.⁷² The court may hear affidavits or any other proper testimony to enable it to determine the truth of the matter according to justice and equity.⁷³ This rule, of course, applies as well to the answer of a stranger to the bill as to that of a party. There is neither reason nor authority for treating the answer of a stranger to the bill as conclusive, while the answer of the party is not conclusive.⁷⁴

§ 249. —Hearing.

The defendant must be given an opportunity to make explanation or defense. Judgment rendered without a hearing or opportunity to defend is void.⁷⁵ The better practice is not to hear the case upon ex-parte affidavits purporting to be made by witnesses of the acts charged to constitute contempt, but to ascertain the facts from testimony taken in open court.⁷⁶

§ 230. —Right to jury trial.—In general.

Although in recent years there has been much academic discussion of the question whether one charged with contempt in violating an order of court is entitled to a trial by jury, judicial opinion is practically unanimous, that no such right exists. This is the

Forging Co., 34 Ind. App. 100, 72 N. E. 277, (By express statutory provision.)

⁶⁹ See cases cited in first note in this section.

⁷⁰ *United States v Anonymous*, 21 Fed. 761 (citing numerous text-books and decisions).

⁷¹ *Employers' Teaming Co. v Teamsters' Joint Council*, 141 Fed. 679, 686, (citing 2 Blackstone's Commentaries 287, 288).

⁷² *Rapalje on Contempt*, Section 120.

⁷³ *Hake v People*, 230 Ill. 174, 82 N. E. 561.

⁷⁴ *United States v Debs*, 64 Fed. 723.

⁷⁵ *Contempt* 9 Cyc. p. 46 and cases cited.

⁷⁶ *United States v Shipp*, 203 U. S. 563, 27 Sup. Ct. 165, 51 L. ed. 319; *In Re Savin* 131 U. S. 261, 9 Sup. Ct. 699, 33 L. ed. 150; *Garrigan v United States*, 163 Fed. 16.

view held by the Supreme Court of the United States and all other courts in which the question has arisen.⁷⁷ It has sometimes been urged that the imposition of fine and imprisonment for disobedience of an injunction or other order of court, by a court without the intervention of a jury is in contravention of the constitutional right to a jury trial.⁷⁸ But the great weight of authority as al-

⁷⁷ *In Re Debs*, 158 U. S. 564, 599, 15 Sup. Ct. 900, 39 L. ed. 1092 (affirming 64 Fed. 723), *United States v Sweeny*, 95 Fed. 434; *Thomas v Cincinnati*, etc. R. Co. 62 Fed. 803, 4 Inters. Com. Rep. 788; *O'Brien v People*, 216 Ill. 354, 75 N. E. 108, 108 Am. St. Rep. 249; *Flannery v People* 225 Ill. 62, 80 N. E. 60; *Watson v Williams*, 36 Miss 351. And see *Contempt* 9 Cyc. 47.

⁷⁸ See dissenting opinion of Judge Caldwell in *Hopkins v Oxley Stave Co.*, 83 Fed. 912, 28 C. C. A. 99, in which it was said: "These mandatory provisions of the Constitution are not obsolete, and are not to be nullified by mustering against them a little horde of equitable maxims and obsolete precedents originating in a monarchical government having no written constitution. No reasoning and no precedents can avail to deprive the citizen accused of crime of his right to a jury trial guaranteed to him by the provisions of the constitution 'except, in cases arising in the land and naval forces, or in the militia when in actual service in time of war or of public danger.' These exceptions serve to emphasize the right, and to show that it is absolute and unqualified both in criminal and civil suits save in the excepted cases. These constitutional guarantees are not to be swept aside by an equitable invention which would turn crime into a contempt, and enable a judge to declare innocent acts crimes, and pun-

ish them at his discretion * * * It is competent for the people of this country to abolish trial by jury, and confer the entire police powers of the state and nation on federal judges, to be administered through the agency of injunctions and punishment for contempts; but the power to do this resides with the whole people, and is to be exercised in the mode provided by the Constitution. It cannot be done by the insidious encroachments of any department of the government"; and dissenting opinion of Scott and Farmer, J. J. in *A. R. Barnes & Co. v Chicago Typographical Union*, 232 Ill. 424, 83 N. E. 940, 14 L. R. A. N. S. 1018, in which it was said: "In a proceeding to punish for a violation of an injunction, where it is charged by the written accusation that a crime has been committed, courts of equity in cases relied on by appellees have determined the innocence or guilt of the defendants without the intervention of a jury, upon ex parte affidavits usually drawn in the words of the solicitor for the complaining party, where the defendants have no opportunity to cross-examine or even see the witnesses * * * No reasoning however strong can disguise the fact that in pursuing such a course the court of chancery denies to the defendants their constitutional right of trial by jury and their constitutional right to be confronted by the witnesses against them.

ready intimated is against this view. A court, enforcing obedience to its orders by proceedings for contempt, it is said, is not executing the criminal laws of the land, but only securing to suitors the rights which it has adjudged them entitled to.⁷⁹ The same act may constitute a contempt and a crime. But the contempt is one thing and the crime another,⁸⁰ and the penalty for a violation of an injunction or other order of court is no substitute for and no defense to a prosecution for any criminal offenses committed in the course of such violation;⁸¹ The inquiry as to the disobedience has been from time immemorial, the special function of the court.⁸² In order that a court may compel obedience to its orders, it must have the right to inquire whether there has been any disobedience thereof. To submit the question of disobedience to another tribunal, be it a jury or another court, would operate to deprive the proceeding of half its efficiency.⁸³

§ 251. —Statutory provisions affecting right.

In many states statutes have been enacted which provide for jury trial in proceedings to punish for contempts committed out of the presence of the court,⁸⁴ and it would seem that these statutes are valid.⁸⁵ It has been held, however, that a statute providing for trial by jury in all cases where a judgment was to be satisfied by imprisonment, has no application to such a proceeding.⁸⁶

§ 252. —Evidence.

In civil proceeding for contempt the guilt of defendants must be established by a preponderance of evidence.⁸⁷ But this will be suf-

⁷⁹ *In Re Debs*, 158 U. S. 564, 596, 15 Sup. Ct. 900, 39 L. ed. 1092; *United States v Debs*, 64 Fed. 723. And see *Supra* cases cited in first note in this section.

⁸⁰ *United States v Debs*, 64 Fed. 723.

⁸¹ *In Re Debs*, 158 U. S. 564, 15 Sup. Ct. 900, 39 L. ed. 1092; *Underhill v Murphy*, 117 Ky. 640, 78 S. W. 111 Am. St. Rep. 2621.

⁸² *In Re Debs*, 158 U. S. 564, 599, 15 Sup. Ct. 900, 39 L. ed. 912; *United States v Sweeny*, 95 Fed. 434; *Watson v Williams*, 36 Miss. 331.

⁸³ *In Re Debs*, 158 U. S. 564, 599,

15 Sup. Ct. 900, 39 L. ed. 912; *Thomas v Cincinnati, etc. R. Co.*, 62 Fed. 803, 4 Inters. Com. Rep. 788.

⁸⁴ See article on "Contempt" 21 *Harvard Law Review*, p. 162, by Professor Beale and statutes of various States.

⁸⁵ *Underhill v Murphy*, 117 Ky. 640, 78 S. W. 482, 111 Am. St. Rep. 262; and see article "Contempt" 21 *Harvard Law Review*, p. 162.

⁸⁶ *O'Brien v People*, 216 Ill. 354, 75 N. E. 108, 108 Am. St. Rep. 249.

⁸⁷ *McBride v Goodman*, 225 Ill. 315, 80 N. E. 306; *O'Brien v People*, 216 Ill. 354, 75 N. E. 108, 108 Am. St.

ficient. It is not necessary to prove the acts constituting the contempt beyond a reasonable doubt.⁸⁸ Although an act charged might be a crime or criminal in its nature, yet unless charged as a crime, the rules of evidence applicable to civil cases will apply.⁸⁹ Where the contempt proceedings are civil in their nature, the production of books and papers by the secretaries of various labor unions, to ascertain whether members of the union had violated an injunction may be compelled,⁹⁰ but proper grounds for application therefor must be laid by affidavit, in which the books and papers called for should be described with reasonable certainty, together with an averment that they contain matter pertinent to the issue and are or were at the time of the notice to produce in the exclusive control of the opposite party.⁹¹ Where one on whom an injunction against interference with plaintiff's workmen was not served, approached a police officer and told him that he (the officer) did not want to see too much of what was going on and that if he did, it would not be well for him and so warned him as a friend "who did not want to see anything harm" him, and when admonished by the officer that he was violating the injunction granted, replied that that was only a frost and that "they would not arrest any people on the injunction any way," the court was warranted in finding that he knew of the injunction and knowingly disobeyed the terms thereof.⁹² Where the contempt proceeding is criminal in its nature, the defendant is entitled to the benefits of the criminal law presumption of innocence, with its strict requirement of proof for conviction, although the pleadings may not be subject to the technical rules of the criminal law.⁹³ The burden of proving the acts charged as constituting the contempt is on the complainant.⁹⁴ The accusations for contempt must be supported by evidence sufficient to convince the mind of the trier beyond a

Rep. 219; *Typothetae of City of New York v Typographical Union No. 6*, 117 N. Y. Suppl. 70.

⁸⁸ *Flannery v People*, 225 Ill. 62, 80 N. E. 60; *McBride v Goodman*, 225 Ill. 315, 80 N. E. 306; *Typothetae of City of New York v Typographical Union No. 6*, 117 N. Y. Suppl. 70.

⁸⁹ *Flannery v People*, 225 Ill. 65, 80 N. E. 60; *Typothetae of City of New York v Typographical Union No. 6*,

117 N. Y. Suppl. 70.

⁹⁰ *Patterson v Building Trades' Council*, 14 Pa. Dist. Rep. 839.

⁹¹ *Patterson v Building Trades' Council*, 14 Pa. Dist. Rep. 839.

⁹² *Titusville Iron Co. v Quinn*, 13 Pa. Dist. 416.

⁹³ *Garrigan v United States*, 163 Fed. 16; *In Re Jose*, 63 Fed. 951.

⁹⁴ *Accumulator Co. v Consolidated Electric Storage Co.*, 53 Fed. 793.

reasonable doubt of the actual guilt of the accused,⁸⁵ and every element of the offense, including a criminal intent must be proved by evidence or circumstances warranting an inference of the necessary facts.⁸⁶ So a deposition of the accused made by him in another proceeding in obedience to a subpoena duces tecum and tending to show his responsibility for violation of the injunction is not admissible against him though the deposition was given without objection at the time and without claiming the benefit of the statute giving the exemption. So long as the exemption is claimed at the time the evidence thus obtained is first sought to be used, contrary to the statute, it is interposed in time. "Of course, the statute would not protect one against a discovery made or evidence given voluntarily, and without necessity; but here the evidence was obtained in obedience to a subpoena, requiring the witness to attend and testify, and the evidence given under such circumstances cannot be said to have been given voluntarily, within the meaning of such a statute." "

§ 253. —Order.

Before a person can be punished for contempt there must be a judgment or order adjudging him guilty of contempt.⁸⁷ It is not however, essential to the validity of an order adjudging a defendant guilty of contempt that it should be in any particular form. Thus it has been held that an order referring to the petition and affidavit filed therefor and which in apt terms adjudges defendant guilty of a violation of an injunction, setting out the manner of its violation, adjudging it to be a contempt and imposing a fine of a designated amount is sufficient.⁸⁸ And it has been held that an order for execution in default of payment of a fine imposed for contempt in the name of the people for the use of the party complaining, though

⁸⁵ *United States v Jose*, 63 Fed. 951; *Accumulator Co. v Electric Storage Co.*, 53 Fed. 793. And see *Long v Bricklayers' & Masons' Union*, 17 Pa. Dist. 984, in which it was held that circumstances which merely create a strong suspicion that respondent knew in a specific way, as well as in a general way what an injunction prohibited, do not authorize a punishment for contempt. Suspicion however strong,

cannot take the place of proof.

⁸⁶ *In Re Jose*, 63 Fed. 951.

⁸⁷ *Hammond Lumber Co. v Sailors' Union of the Pacific*, 167 Fed. 809, 824.

⁸⁸ *Contempt* 9 Cyc. p. 48 and cases cited.

⁸⁹ *Franklin Union v People*, 220 Ill. 355, 77 N. E. 177, 110 Am. St. Rep. 248; and see *Fischer v Haynes*, 6 Fed. 63.

erroneous because there is no statute authorizing imposition of a fine by way of indemnity to the complaining party, may be modified by striking out that part of it which is objectionable.¹

§ 254. —Effect of appeal as staying proceedings to punish for contempt.

The fact that an appeal has been taken from a decree awarding an injunction prohibiting the doing of an act does not suspend its operation, and any disobedience thereof is a contempt of the court issuing the injunction and punishable by it pending the appeal. The reason for this is that a prohibitory decree which does not require anything to be done is self-executing. It would be otherwise in the case of a mandatory decree requiring something to be done as in such case a proceeding for contempt in refusing to obey it would be in the nature of an execution to enforce the command. "To adopt a rule that the court granting an injunction must stand idly by and see it violated while an appeal is pending and after the case is reinstated in that court may then proceed to punish would be attended with evil consequences. All that would be necessary for a defendant to do to secure immunity until the case should be reinstated in the court would be to pray an appeal and file a bond." If the court should be denied the right to compel obedience to the prohibition of the decree until the original case has completed its rounds through the courts, the appellees might lose all the benefits of their litigation and have their business ruined although the decree should be finally affirmed.²

§ 255. Review of order in contempt proceedings.—By appeal or writ of error.—Jurisdiction.

There is nothing in the nature of contempt proceedings which renders them not open to review.³ While *sui generis*, they are of two distinct classes, civil and criminal, and the right to review and methods of review by appeal or error in the absence of

¹ A. R. Barnes & Co. v Chicago Typographical Union, 232 Ill. 402, 83 N. E. 932, 122 Am. St. Rep. 129, 14 L. R. A. N. S. 1150.

² A. R. Barnes & Co. v Chicago Typographical Union, 232 Ill. 402, 83 N. E. 932, 122 Am. St. Rep. 129, 14 L.

R. A. N. S. 1150, (affirming 134 Ill. App. 11).

³ Bessette v W. B. Conkey Co., 194 U. S. 324, 335, 24 Sup. Ct. 665, 48 L. ed. 997. And see Hake v People, 230 Ill. 174, 82 N. E. 561.

some statute especially regulating the question in contempt proceedings, should be governed by the statutes applicable to the review of judgments, decrees or orders in civil or criminal actions generally, in the jurisdiction where the case arises. Thus it has been held that although a statute gives the right of appeal to defendant in proceedings for a contempt of a criminal nature,⁴ and makes no mention of civil proceedings for contempt, yet it does not necessarily follow that no appeal lies from a final judgment in a civil proceeding for contempt, but on the contrary such appeal is authorized by a general statute authorizing appeals to be taken from "all" final judgments.⁵ It has been held that an appeal lies from a final order, denying a motion to punish a defendant in a civil proceeding for contempt under a statute allowing appeals from final orders generally.⁶ The view that the right to and method of review is to be governed by the statutes of the jurisdiction where the case arises, relating to review in civil or criminal actions is further borne out by decisions on the practice in federal courts. Under a statute which gives the United States Circuit Court, jurisdiction to review "criminal cases," such court has power to review a final order in a criminal proceeding to punish for contempt,⁷ and in case such court refuses to take jurisdiction, mandamus will issue from the Supreme Court directing it to do so.⁸ According to the established practice of the federal courts, such review must be by writ of error.⁹ Nevertheless proceedings which are criminal in their nature and intended for the vindication of public justice rather than the coercion of the opposite party to do some act for the benefit of another party to the action, are the

⁴ *Anderson v Indianapolis Drop Forging Co.*, 34 Ind. App. 100, 72 N. E. 277.

⁵ *McKinney v Frankfort, etc. R. Co.*, 140 Ind. 95.

⁶ *Vilter Mfg. Co. v Humphrey*, 132 Wis. 587, 112 N. W. 1095, 13 L. R. A. N. S. 591.

⁷ *Bessette v W. B. Conkey Co.*, 194 U. S. 324, 325, 24 Sup. Ct. 665, 48 L. ed. 997; *Matter of Christensen Engineering Co.*, 194 U. S. 458, 24 Sup. Ct. 665, 48 L. ed. 997; *Garrigan v United States*, 163 Fed. 16. And see *Ham-*

mond Lumber Co. v Sailors' Union of the Pacific, 167 Fed. 809.

⁸ *Matter of Christensen Engineering Co.*, 194 U. S. 458, 24 Sup. Ct. 665, 48 L. ed. 997.

⁹ *Bessette v W. B. Conkey Co.*, 194 U. S. 324, 24 Sup. Ct. 665, 48 L. ed. 997; *Bucklin v United States*, 159 U. S. 680, 16 Sup. Ct. 182, 40 L. ed. 304; *Deland v Platte County*, 155 U. S. 221, 15 Sup. Ct. 82, 39 L. ed. 128; *Walker v Draville*, 12 Wall (U. S.) 440, 20 L. ed. 429.

only ones reviewable in the Circuit Court of Appeals under the statute mentioned.¹⁰ The United States Supreme Court, however, has no jurisdiction to review criminal proceedings to punish for contempt either on appeal or writ of error, as its appellate jurisdiction in criminal matters is by statute limited to capital cases.¹¹ Its only jurisdiction to review contempt proceedings either by appeal or writ of error, is in cases where the proceedings are of a purely civil and remedial nature, and then only on appeal from or error to the final decree.¹²

§ 256. — —Scope of review.

As regards the scope of the review in criminal proceedings for contempt, the court is limited to a consideration of matters of law. The decision of the trial court on the facts is conclusive.¹³ Even the question of jurisdiction to entertain the original bill cannot be raised by persons not parties thereto in a proceeding to punish them for contempt in confederating with defendants in the suit, and asserting them to violate an injunction issued in such suit.¹⁴ In civil proceedings for contempt the court may review the facts, and determine whether defendant committed the acts charged,¹⁵ and whether they were in violation of the injunction.¹⁶ The court cannot however consider the question whether the injunction which was charged to have been disobeyed was too broad,¹⁷ nor the question as to the power of the trial court, after the fine is collected, to direct the payment of the whole or any portion thereof to com-

¹⁰ *Doyle v London Guarantee Co.*, 204 U. S. 599, 27 Sup. Ct. 313, 51 L. ed. 641.

¹¹ *Bessette v W. B. Conkey Co.*, 194 U. S. 324, 24 Sup. Ct. 665, 48 L. ed. 397; *Matter of Christensen Engineering Co.*, 194 U. S. 458, 24 Sup. Ct. 665, 48 L. ed. 997; *Hayes v Fisher*, 102 U. S. 121, 26 L. ed. 95.

¹² *Bessette v W. B. Conkey Co.*, 194 U. S. 324, 24 Sup. Ct. 665, 48 L. ed. 397; *Doyle v London Guarantee Co.*, 204 U. S. 599, 27 Sup. Ct. 313, 51 L. ed. 641; *Hammond Lumber Co. v Sailors' Union of the Pacific*, 167 Fed. 809.

¹³ *Matter of Christensen Engineering Co.*, 194 U. S. 458, 24 Sup. Ct. 665, 48 L. ed. 997.

¹⁴ *Ex parte Richards*, 117 Fed. 658.

¹⁵ See *O'Brien v People*, 216 Ill. 354, 75 N. E. 108, 108 Am. St. Rep. 249.

¹⁶ *Vilter Mfg. Co. v Humphries*, 132 Wis. 587, 112 N. W. 1095, 13 L. R. A. N. S. 587; *O'Brien v People*, 216 Ill. 354, 75 N. E. 108, 108 Am. St. Rep. 249.

¹⁷ *Vilter Mfg. Co. v Humphries*, 132 Wis. 587, 112 N. W. 1095, 13 L. R. A. N. S. 587.

plainants in satisfaction of their damages and expenses,¹⁸ and individual appellants, in the absence of a certificate of the clerk that they have filed a complete record, cannot raise the question that the recitals found in the several orders appealed from are not sufficient upon which to base a judgment of conviction.¹⁹ On appeal from a final order denying a motion to punish a defendant in a civil proceeding for contempt, the court may on reversal, and remand of the proceeding, direct the entry of an order adjudging defendant guilty of contempt and imposing a fine in accordance with a statute providing therefor.²⁰ A court of review has no power to modify or extenuate the penalty imposed.²¹

§ 257. —By Habeas Corpus or Certiorari.

The writ of *habeas corpus* cannot be used as a writ of error or appeal. The only question for determination thereon is the jurisdiction of the court to make the order or grant the injunction which it is charged was disobeyed. The question of disobedience thereto is not open to consideration,²² nor is the question whether defendant had knowledge of the injunction.²³ Where however this writ is supplemented by *certiorari*, it may bring the whole case before the appellate court for review.²⁴

¹⁸ *Franklin Union v People*, 220 Ill. 355, 77 N. E. 176, 110 Am. St. Rep. 248, 4 L. R. A. N. S. 1001.

¹⁹ *Franklin Union v People*, 220 Ill. 355, 77 N. E. 176, 110 Am. St. Rep. 248, 4 L. R. A. N. S. 1001.

²⁰ *Vilter Mfg. Co. v Humphries*, 132 Wis. 587, 112 N. W. 1095, 13 L. R. A. N. S. 587.

²¹ *Gompers v Buck's Stove & Range Co.*, (D. C. App.) 37 Wash. Law Rep. 706.

²² *Bessette v W. B. Conkey Co.*, 194 U. S. 324, 325, 24 Sup. Ct. 665, 48 L.

ed. 997; *In Re Lennon*, 156 U. S. 548, 17 Sup. Ct. 658, 41 L. ed. 1110; *In Re Debs*, 158 U. S. 564, 15 Sup. Ct. 900, 39 L. ed. 1092; *In Re Swan*, 150 U. S. 637, 14 Sup. Ct. 225, 37 L. ed. 1207; *Ex parte Haggerty*, 124 Fed. 441; *In Re Reese*, 107 Fed. 942.

²³ *Castner v Pocahontas Collieries Co.*, 117 Fed. 184.

²⁴ *Bessette v W. B. Conkey Co.*, 194 U. S. 324, 24 Sup. Ct. 665, 48 L. ed. 997; *In Re Watts and Sachs*, 190 U. S. 123 Sup. Ct. 718, 47 L. ed. 933.

CHAPTER XIX

RIGHTS OF EMPLOYERS IN RESPECT OF CONTRACTS OF HIRING AND VALIDITY OF STATUTES ASSUMING TO RESTRICT RIGHT.

§ 258. In general.

§ 259. Statutory restrictions on rights of employers in respect of contracts for labor—State legislation— —Statutes uniformly held invalid.

§ 260. Deprivation of liberty or property without due process of law.

§ 261. Not invalid as police regulations.

§ 262. Statutes objectionable as special legislation.

§ 263. Decreased efficiency of workmen bound by union regulations.

§ 264. Federal legislation.

§ 258. Rights of employers in respect of contracts of hiring, and statutes assuming to restrict right.²⁵—In general.

An employer has the right to fix the terms and conditions upon which he is willing to give employment; ²⁶ he has the right to employ whom he pleases,²⁷⁻²⁸ and to refuse employment to any one with whom he does not care to have business relations.²⁹ It is immaterial what his reasons are, whether good or bad, well or ill-founded, or entirely trivial and whimsical.³⁰ So long as there is no contract for a definite period between an employer and his workmen, he, or his officers or agents have the absolute right to discharge one or any number of them for any reason which may seem

Cross References:

²⁵ For correlative right of employes not bound by contract for definite time to quit work. See *supra* chapter IV, STRIKES, Section 31.

²⁶ *Goldfield Consol. Mines Co. v Goldfield Miners' Union*, 159 Fed. 500, 515.

²⁷⁻²⁸ *Georgia*.—*Jones v Von Winkle Gin Works*, 131 Ga. 336, 63 S. E. 236, 127 Am. St. Rep. 235.

Illinois.—*Braceville Coal Co. v People*, 147 Ill. 66, 35 N. E. 62, 37 Am. St. Rep. 206, 22 L. R. A. 340.

Maryland.—*My Maryland Lodge v Adt.*, 100 Md. 283, 59 Atl. 721, 68 L.

R. A. 752.

New York.—*Master Stevedores' Ass'n v Walsh*, 2 Daly 1.

Ohio.—*State v Bateman*, 10 Ohio Dec. 68, 7 Ohio N. P. 787.

United States.—*United States v Kane*, 23 Fed. 748.

²⁹ *People v Marcus*, 185 N. Y. 257, 77 N. E. 1073, 113 Am. St. Rep. 902, 7 L. R. A. N. S. 282; *Platt v Philadelphia etc. R. Co.*, 65 Fed. 660.

³⁰ *Goldfield Consolidated Mines Co. v Goldfield Miners' Union*, 159 Fed. 500, 515; *Boyer v Western Union Tel. Co.*, 124 Fed. 246.

good,³¹ and so if workmen are employed for a certain period he may discharge any or all of them at the termination of that period or for violation of their contract,³² and no power exists in any court to compel an employer to retain an employe in his service,³³ or to compel the re-employment of discharged employes.³⁴ If an employer desires to have or retain in his employ only non-union men, he will be protected in his right to do so.³⁵ In no sense is the exercise by the employer of his constitutional right to employ and retain in his employment such persons as he may choose and are willing to work for him, an interference with the right of the employe to belong to a labor union.³⁶

§ 259. Statutory restrictions on rights of employers in respect of contracts for labor—State legislation— —Statutes uniformly held invalid.

Statutes have been enacted in many states, prohibiting one or more of the following acts,—discharge or threats to discharge an employe for joining a union; discharge or threats to discharge an employe for not withdrawing from a union to which he belongs; making it a condition of obtaining employment that the person seeking it refrains from joining a union; making it a condition that the person seeking employment withdraw from a union of which he is a member; making it a condition of securing or continuing in employment that the person employed or seeking employment shall agree to become or continue a member of a union; prohibiting superintendents of free employment agencies from furnishing workmen or lists of workmen to employers whose men were on a strike or locked out—and making the parties doing such acts liable in damages or to criminal prosecution. With the sole exception of one nisi prius case,³⁷ which was subsequently disap-

³¹ *Jersey City Printing Co. v Cassidy*, 63 N. J. Eq. 759; *Jones v Maher*, 116 116 N. Y. Suppl. 180, 62 Misc. 388; *Boyer v Western Union Tel. Co.*, 124 Fed. 246; *Frank v Denver etc. R. Co.*, 40 Fed. 759.

³² *My Maryland Lodge v Adt*, 100 Md. 238, 59 Atl. 721, 68 L. R. A. 252.

³³ *Arthur v Oakes*, 63 Fed. 310, 11 C. C. A. 209, 25 L. R. A. 414, 4 Inters. Com. Rep. 744.

³⁴ *Union Pac. R. Co. v Ruef*, 120 Fed. 102, 114.

³⁵ *Boyer v Western Union Tel. Co.*, 124 Fed. 246; *Flaccus v Smith*, 199 Pa. St. 128, 48 Atl. 894, 85 Am. St. Rep. 779, 54 L. R. A. 640; *Platt v Philadelphia etc. R. Co.*, 65 Fed. 660.

³⁶ *State v Bateman*, 10 Ohio Dec. 68, 81.

³⁷ *Davis v State*, 11 Ohio Dec (Reprint) 894, 30 W. L. B. 324.

proved in another *nisi prius* case in the same state,³⁸ the decisions have held these statutes unconstitutional and void.³⁹ All of these statutes except one are designed to prevent discrimination against union men in respect of contracts for employment. One statute, however, contains an additional element in that it prohibits contracts requiring employes to join a union as a condition of employment. This added element it is said "simply makes wider and larger the invasion of the liberty of the employer to fix the terms and conditions upon which he will contract for labor."⁴⁰

260. — Deprivation of liberty or property without due process of law.

One of the reason assigned, and it is given in all of the decisions holding these statutes void, is that they are in contravention of those organic provisions of state and federal government which guarantee that no person shall be deprived of life, liberty, or property without due process of law, and unduly restrict the right of contract of the persons at whom they are aimed.⁴¹ Statutes which profess to exert such a power, it has been said, are nothing more nor less than a "legislative judgment," and an attempt to deprive all who are included within its terms of a constitutional right without due process of law.⁴² That the words "life," "liberty," and "property" are not to be taken in their absolute sense is, of course obvious. Individuals may, notwithstanding the con-

³⁸ *State v Bateman*, 10 Ohio Dec. 68, 7 Ohio N. P. 787.

³⁹ *Illinois*.—*Mathews v People*, 202 Ill. 389, 67 N. E. 28, 95 Am. St. Rep. 241, 63 L. R. A. 73; *Gillespie v People*, 188 Ill. 176, 58 N. E. 1007, 52 L. R. A. 283, 80 Am. St. Rep. 176.

Kansas.—*Coffeerville, etc. Co. v Perry*, 69 Kan. 297, 26 Pac. 848, 66 L. R. A. 185.

Missouri.—*State v Julow*, 129 Mo. 163, 31 S. W. 781, 29 L. R. A. 257, 50 Am. St. Rep. 443.

New York.—*People v Marcus*, 185 N. Y. 257, 77 N. E. 1073, 7 L. R. A. N. S. 282, 113 Am. St. Rep. 902, (affirming 97 N. Y. Suppl. 323, 110 App. Div. 255).

Ohio.—*State v Bateman*, 10 Ohio Dec. 68, 7 Ohio N. P. 487; *State v Harmon*, 23 Ohio Cir. Ct. 299.

Wisconsin.—*State v Kreutzburg*, 114 Wis. 530, 90 N. W. 1098, 58 L. R. A. 748, 91 Am. St. Rep. 934.

United States.—*Goldfield Consolidated Mines Co. v Goldfield Miners' Union*, 159 Fed. 500. And see *United States v Scott*, 146 Fed. 431.

⁴⁰ *Goldfield Consolidated Mines Co. v Goldfield Miners' Union*, 159 Fed. 500.

⁴¹ See cases cited in the preceding section.

⁴² *State v Julow*, 129 Mo. 163, 31 S. W. 781, 50 Am. St. Rep. 443, 29 L. R. A. 257.

stitutional prohibition, be deprived of life or liberty as punishment for crime, and may be deprived of some measure of property or of happiness in deference to and protection of the welfare of the whole community. Most of the legislative acts which fill the statute books detract in some measure from the absolute freedom of the individual to act wholly at the dictate of his will, and yet are of either decided or fully recognized constitutionality. On the other hand, these words are not to receive an unduly "limited" construction.⁴⁸ They are intended to cover every right to which a member of the body politic is entitled under the law.⁴⁹ It is now well settled that liberty does not mean merely immunity from imprisonment, and that "property" is not confined to tangible objects which can be passed from hand to hand;⁵⁰ "Liberty" is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation; and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned,⁵¹ and within the word "property" are included those rights of possession, disposal, management, and of contracting with reference thereto, which render property useful, valuable, and a source of happiness, right to pursuit of which is reserved.⁵² As the right of contract is included in the word "liberty" and "property," a deprivation thereof is a deprivation of liberty, and in violation of the constitutional provisions.⁵³

⁴⁸ *State v Kreutzberg*, 114 Wis. 530, 90 N. W. 1098, 91 Am. St. Rep. 934, 58 L. R. A. 748. See also *Adair v United States*, 208 U. S. 161, 28 Sup. Ct. Rep. 277.

⁴⁹ *Gillespie v People*, 188 Ill. 176, 58 N. E. 1007, 80 Am. St. Rep. 170, 52 L. R. A. 283; *State v Julow*, 129 Mo. 163, 31 S. W. 781, 50 Am. St. Rep. 443, 29 L. R. A. 257; *Goldfield Consolidated Mines Co. v Goldfield Miners' Union*, 159 Fed. 500.

⁵⁰ *State v Kreutzberg*, 114 Wis. 530, 90 N. W. 1098, 91 Am. St. Rep. 934, 58 L. R. A. 748.

⁵¹ *Allgeier v Louisiana*, 165 U. S. 578, 589; 17 Sup. Ct. 427, 41 L. ed. 832.

⁵² 2 Story Const. (5th Law ed.). Section 1950.

⁵³ *Illinois*.—*Gillespie v People*, 188 Ill. 176, 58 N. E. 1007, 52 L. R. A. 283, 80 Am. St. Rep. 176.

Kansas.—*Coffeyville etc. Co. v Perry*, 69 Kan. 297, 76 Pac. 848, 66 L. R. A. 165.

Missouri.—*State v Julow*, 129 Mo. 163, 31 S. W. 781, 50 Am. St. Rep. 443, 29 L. R. A. 257.

New York.—*People v Marcus*, 185

§ 261. — — Not valid as police regulations.

Statutes of the character under consideration cannot be justified as an exercise of the police power. While as previously stated, the rights conferred by the constitutional provisions are not absolute,⁴⁹ legislatures have no power to restrict the exercise of a constitutional right, unless the interests of the public, as distinguished from the interest of the individual, or of a class of individuals, demand such restraint.⁵⁰ The acts forbidden do not affect the public welfare, health, safety, or morals of the community, or prevent the commission of any offense, or other manifest evil. Where the object of the acts cannot be treated as the accomplishment of some one of these purposes, they are not police regulations.⁵¹ And it has been said that even if the object of the acts were traceable to such purposes they would not be allowed under the guise and pretense of police regulations to encroach or trample upon any of the just rights of the citizen which the constitution intended to secure against diminution or abridgment.⁵² In one case menace to public welfare was suggested by counsel, based upon the assertion that discharges of employes, especially union men, are likely to be followed by turbulence, violence, and even bloodshed, and that it was, in consequence, proper to deprive employers of their rights, presumably because they are ordinarily law-abiding, and will not make trouble. In disposing of this singular argument, the court said, "We decline to acknowledge as a fact that the laboring men, as a class, union or non-union, are more prone to lawbreaking or violence than other classes of the community, or to adopt the theory that the legislature so assumed. But even if that assump-

N. Y. 257, 77 N. E. 1073, 113 Am. St. Rep. 902, 7 L. R. A. N. S. 282.

Wisconsin.—*State v Kreutzberg*, 114 Wis. 530, 90 N. W. 1098, 91 Am. St. Rep. 934, 58 L. R. A. 748.

⁴⁹ See the preceding section.

⁵⁰ *Goldfield Consol. Mines Co. v Goldfield Miners' Union*, 159 Fed. 500, 514.

⁵¹ *Kansas*.—*Coffeyville etc. Co. v Perry*, 69 Kan. 297, 26 Pac. 848, 66 L. R. A. 185.

Missouri.—*State v Julow*, 129 Mo. 163, 31 S. W. 781, 50 Am. St. Rep.

443, 29 L. R. A. 257.

Ohio.—*State v Bateman*, 10 Ohio Dec. 68, 7 Ohio N. P. 487.

Wisconsin.—*State v Kreutzberg*, 114 Wis. 530, 90 N. W. 1098, 58 L. R. A. 748, 91 Am. St. Rep. 934.

United States.—*Goldfield Consolidated Mines Co. v Goldfield Miners' Union*, 129 Fed. 500. And see *United States v Scott*, 146 Fed. 431.

⁵² *State v Julow*, 129 Mo. 163, 31 S. W. 781, 50 Am. St. Rep. 427, 29 L. R. A. 257. See also in re *Jacobs*, 98 N. Y. 98.

tion were made, it would constitute no justification for depriving one man of his liberty of contract, that another was likely to commit crimes or breaches of the peace. As well deny the right of private ownership of chattels because they tempt the thief to steal''⁵³

§ 262. — —Statutes objectionable as special legislation.

These statutes are also unconstitutional because they undertake to limit the power of the employer as to his right to contract or to terminate a contract with particular persons of a class. Where a statute does not relate to persons or things as a class, but to particular persons or things of a class, it is a special as distinguished from a general law. The legislature cannot take what may be termed a natural class of persons, split that class in two, and then arbitrarily designate the dissevered fractions of the original unit as two classes, and enact different rules for the government of each. This would be mere arbitrary classification, without any basis of reason on which to rest.⁵⁴ Under these statutes a non-trade union man or non labor union man can be discharged without ceremony, without let or hindrance, whenever the employer so desires with or without reason therefor, while in the case of a trade union or labor union man, he cannot be discharged if such discharge rests on the ground of his being a member of such an organization. In other words, the legislature have undertaken to limit the power of the owner or employer as to his right to contract with or to terminate a contract with particular persons of a class, and therefore the statute which does this is a special, not a general law.⁵⁵ A text writer, judge, and teacher, of great and enduring reputation, has said: "A statute would not be constitutional which should select particular individuals from a class or locality and subject them to peculiar rules, or impose upon them special obligations or burdens, from which others in the same class or locality are exempt. * * * Every one has a right to demand that he be governed by general rules, and a special statute, which,

⁵³ State v Kreutzberg, 114 Wis. 530, 176, 58 N. E. 1007, 80 Am. St. Rep. 90 N. Y. 1098, 91 Am. St. Rep. 934, 176, 52 L. R. A. 283.
58 L. R. A. 748.

⁵⁴ State v Julow, 129 Mo. 163, 31 S. W. 784, 50 Am. St. Rep. 143, 29 L. R. A. 257.
⁵⁵ State v Julow, 129 Mo. 163, 31 S. W. 784, 50 Am. St. Rep. 143, 29 L. R. A. 257; Gillespie v People, 188 Ill.

without his consent, singles his case out as one to be regulated by different law from that which is applied in all similar cases would not be legitimate, but would be such an arbitrary mandate as is not within the province of free government.”⁵⁶

§ 263. —Decreased efficiency of workman bound by union regulations.

It has also been said that the success in life of the employer depends on the efficiency, fidelity, and loyalty of his employes. “Without enlarging upon or debating the relative advantages or disadvantages of the labor union, either to its members or to the community at large, it is axiomatic that an employer cannot have undivided fidelity, loyalty, and devotion to his interests from an employe who has given to an association right to control his conduct. He may by its decisions be required to limit the amount of his daily product. He may be restrained from teaching his art to others. He may be forbidden to work in association with other men whose service the employer desires. He may not be at liberty to work with such machines or upon such materials or products as the employer deems essential to his success. In all these respects he may be disabled from the full degree of usefulness attributable to the same abilities in another who may not yield up to an association any right to restrain his freedom of will and exertion in his employer’s behalf according to the latter’s wishes. Such considerations an employer has a right to deem valid reasons for preferring not to jeopardize his success by employing members of organizations. A man who has by agreement or otherwise shackled any of his faculties—even his freedom of will—may well be considered less useful or less desirable by some employers than if free and untrammelled.”⁵⁷

§ 264. Federal legislation.

Act June 1, 1898, c 730 § 10 (Comp. Stat. 1901 p. 3211) makes it a criminal offense, punishable by fine, for any employing common carrier subject to the provisions of the act, and any officer, agent, or receiver thereof to require any employe or any person seeking employment, as a condition of employment to enter into an agreement not to become or remain a member of any labor corpora-

⁵⁶ Cooley Const. Law 391.

90 N. W. 1098, 91 Am. St. Rep. 934,

⁵⁷ State v Kreutzberg, 114 Wis. 530,

58 L. R. A. 748.

tion, association or organization or to threaten any employe with loss of employment or unjustly discriminate against any employe because of his membership in such labor corporation, association, or organization. This section first received the consideration of the courts in *United States v Hill*, in 1898—an unreported case—where a trial for a violation of its provisions resulted in a hung jury. A demurrer to the indictment was overruled, and the action of the court necessarily involved the statute's being constitutional. The next decision is *United States v Scott*,⁵⁸ decided Oct. 1906. The court sustained a demurrer to an indictment based on provisions of the statute on the ground that it was not in the constitutional sense, a regulation of commerce, or of commercial intercourse among the states “inasmuch as its essential object manifestly is only to regulate certain phases of the right of an employer to choose his own servants, whether the duties of those servants when employed shall relate to interstate commerce or not;” and that its provisions being applicable to intrastate as well as to interstate commerce and not separable from each other, the section was beyond the power of congress to enact. The question of the constitutionality of this statute also came up for consideration in *United States v Adair*,⁵⁹ decided in 1907, on a demurrer to an indictment against an agent of a railroad company engaged in interstate commerce for discharging from its service an employe because of his membership in a labor organization, and the court while approving the decisions of the courts condemning state legislation of a similar character, upheld the constitutionality of this statute on the ground that it directly regulated an adjunct of interstate commerce and that congress has power, under the constitutional provisions authorizing it to regulate commerce, to regulate the adjuncts of interstate commerce as much so as interstate commerce itself. A distinction was drawn between a person engaged in a lawful private business and a common carrier engaged in interstate commerce. The former it was said “has a fundamental right upon his own choice to engage in and carry on such business. The latter has no such right. It exercises a public function and has no right to exercise it except by consent of the national government express or implied.”⁶⁰ It was decided in this case that the statute

⁵⁸ 148 Fed. 431.

⁵⁹ See p. 756.

⁶⁰ 152 Fed. 737.

was not in violation of the constitutional provision against depriving one of liberty and property without due process of law, nor as penalizing a common carrier engaged in interstate commerce for discharging an employe, because of his membership in a labor organization on that ground without reference to the fact whether he is engaged in interstate commerce, or solely in intra-state commerce. On appeal to the Supreme Court of the United States this decision was reversed.⁶¹⁻⁶² The court held that the statute was an invasion of the personal liberty, as well as of the right of property guaranteed by the fifth amendment of the constitution declaring that no person shall be deprived of liberty or property without due process of law. Subject to such reasonable restraints as the common good or the general welfare may require, personal liberty and the right of property, it was said, embrace the right to make contracts for the purchase of labor of others and equally the right to make contracts for the sale of one's own labor, and it is not within the functions of the government, at least, in the absence of contract between the parties—to compel any person, in the course of his business, and against his will, to accept or retain the personal services of another, or to compel any person against his will, to perform personal services for another. The right of a person to sell his labor upon such terms as he deems proper, is in its essence the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it. So the right of the employe to quit service is the same as that of the employer to dispense with the services of such employe. In all such particulars, the employer and employe have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which will not be tolerated. In respect of the contention that the power to enact the statute could be referred to the power of Congress to regulate interstate commerce without regard to any question of personal liberty or right of property arising under the 5th amendment, it was said that, the contention could have no bearing unless the statute was a regulation of commerce among the states, and a majority of the court held that there was no such connection between interstate commerce and membership in a labor organization, as to authorize

⁶¹⁻⁶² *Adair v United States*, 208 U. S. 399, 161, 28 Supt. Ct. 277, (Justices Holmes and McKenna dissenting).

congress to make it a crime for an agent of an interstate carrier to discharge an employe because of such membership on his part. Two of the Justices dissented from this view and wrote elaborate opinions stating the grounds for their dissent. In support of the majority opinion it was said that labor organizations have nothing to do with interstate commerce, as such. One who engages in the service of an interstate carrier will, it must be assumed, faithfully perform his duty, whether he be a member or not a member of a labor organization. His fitness for the position in which he labors and his diligence in the discharge of his duties cannot, in law or sound reason, depend in any degree upon his being or not being a member of a labor organization. It cannot be assumed that his fitness is assured, or his diligence increased, by such membership, or that he is less fit or less diligent because of his not being a member of such organization. It is the employe as a man, and not as a member of a labor organization, who labors in the service of an interstate carrier. It could not be assumed that the enactment of the statute was due to an apprehension that members of labor organizations would, by violent and illegal measures, interrupt or impair the freedom of commerce among the states, unless legislation discriminating in their favor was passed, nor that members of labor organizations, will, in any considerable numbers, resort to illegal methods for accomplishing any particular purpose that they have in view. Justice McKenna said in his dissenting opinion that the section condemned detached from the balance of the act might be open to condemnation, but that the provisions of the act taken as a whole, present a well co-ordinated plan for settlement of disputes between interstate carriers and their employes, by bringing the disputes to arbitration and thereby preventing strikes, and the public discord and derangement of business consequent thereupon. In his opinion, the majority of the court gave too much isolation to this section which was part of the means to secure and make effective the schemes of arbitration set forth in the act, and the purpose of the 8th section was in aid of interstate commerce and not a mere restriction upon the liberty of carriers to employ whom they please and have business relations with whom they please. This case, he said was within the rule in *Howard v Illinois Cent. R. Co.*⁸³ holding that it was competent for congress, under its power to regulate interstate commerce, to prescribe the rule of liability as between in-

⁸³ 207 U. S. 463, 28 Sup. Ct. Rep. 141.

terstate carriers and its employes in such interstate commerce in case of personal injuries received by such employe while engaged in such commerce, and *Johnson v Southern Pac. R. Co.*,^a holding that Congress could enact legislation requiring interstate carriers to equip their cars used in interstate commerce with automatic couplers and continuous brakes and their locomotives with driving wheel brakes. His conclusion (in which Justice Holmes concurred) was that a provision which will prevent, or tend to prevent the stoppage of every wheel in every car of an entire railroad system, has as direct influence on interstate commerce as the way in which one car may be coupled to another, as the rule of liability for personal injuries to an employe.

^a 196 U. S. 1, 49 L. ed. 363, 25 Sup. Ct. Rep. 158.

CHAPTER XX.

LOCKOUTS AND ACTS IN FURTHERANCE OF LOCKOUTS.*

§ 265. A lockout is a cessation of the furnishing of work to employes in an effort to get for the employer more favorable terms,⁶⁶ and is the antithesis of the strike which is a withholding of labor for the purpose of obtaining more favorable terms of employment for the strikers.⁶⁷ Inasmuch as the rights of capital and labor are measured by the same yardstick, it necessarily follows that the lockout is as lawful a weapon in the hands of the employer as the strike in the hands of the employe. In other words, for any purpose for which a strike is lawful, a lockout is lawful, and whatever means may lawfully be used to render a strike effective, may be used to render a lockout effective. It has accordingly been declared that inasmuch as employes have the right to strike to compel an advance in the rate of wages, or a reduction in the hours of labor, or to otherwise improve the conditions of their employment, an employer has the right to lockout his employes, for the purpose of resisting demands by them for improved conditions of employment, or to compel them to work at a less rate of wages, or on terms less beneficial to them than those existing prior to the lockout.⁶⁸ Furthermore, an employer who has locked out his employes, may, in order to render the lockout effective, use peaceable persuasion and argument to induce other employers not to hire the men locked out for higher wages or on better terms than those for which he made his stand, and not to take in his late employes at all so that they may be forced back to his plant on his own terms.⁶⁹ This right is the exact equivalent of the well established right of striking employes to use peaceable argument and persuasion to induce

Cross References:

⁶⁶ For combinations to lock out employes see *Infra* Chapter XXI, COMBINATIONS OF EMPLOYERS, Section 269.

⁶⁷ *Iron Moulders' Union v Allis-Chalmers Co.*, 166 Fed. 45, 20 L. R. A. N. S. 315.

⁶⁸ See *Supra* Chapter IV, *Strikes*.

⁶⁹ See *Sinsheimer v United Garment Workers*, 77 Hun. 215, 28 N. Y. St. 503, 28 N. Y. Suppl. 321; *City Trust Safe Deposit Co. v Waldhauer*, 47 Misc. 7, 95 N. Y. Suppl. 222.

⁶⁹ *Iron Moulders' Union v Allis-Chalmers Co.*, 166 Fed. 45, 20 L. R. A. N. S. 315.

other workmen not to take their places.⁷⁰ But inasmuch as striking workmen have no right to use force, violence or coercion to prevent other workmen from taking their places,⁷¹ an employer who has locked out his employes has no right to pursue a similar line of conduct to prevent other employers from hiring the workmen whom he has locked out. Nor will he be permitted, though it would reduce the fighting strength of the workmen locked out, to coerce their landlords and grocers into cutting off their shelter and food.⁷² So it has been said that if two or more officers of a railroad company in view of a threatened strike, agreed wrongfully and corruptly that they would not employ men to take the places of the men who had quitted the service, but would allow the trains to stand still for the sake, merely, of creating public sympathy or indignation against strikers, they would be guilty of conspiracy, unless the circumstances and situation were such that the employment of new men, reasonably viewed, would lead to danger to those men, or danger to the railroad property, or danger to any public interest.⁷³

⁷⁰ See *supra* chapter V, *Acts In Furtherance of Strikes*, section 61.

⁷¹ See *Supra* Chapter V, *Acts in Furtherance of Strikes*, section 63.

⁷² *Iron Moulders' Union v Allis-*

Chalmers Co., 166 Fed. 45, 20 L. R. A. N. S. 315.

⁷³ *United States v Debs*, 63 Fed. 436.

CHAPTER XXI.

COMBINATIONS OF EMPLOYERS.

- § 266. Right to combine in general and means of rendering combination effective.
- § 267. To fix rate of wages.
- § 268. To resist combination of workmen to advance wages.
- § 269. To lockout employes.
- § 270. To refuse employment to designated classes of workmen.
- § 271. To compel workmen to join particular union.
- § 272. Internal administration of association—Rules and by-laws.
- § 273. Disciplining members.

§ 266. Right to combine in general and means of rendering combination effective.

In furtherance of their common welfare and in settlement of their oftentimes conflicting interests, employers and employes stand upon a plane of perfect equality before the law enjoying the same freedom and amenable to the same restrictions,⁷⁴ for it is fundamental that one and the same set of rules should govern the action of both contestants.⁷⁵ Laborers having the right as heretofore shown to form unions or associations,⁷⁶ it necessarily follows that employers enjoy the same right.⁷⁷ But combinations of employers,

Cross References:

For correlative right of employes to combine, and the purpose for which combination is lawful see *supra*, chapter II, THE RIGHT OF WORKINGMEN TO COMBINE AND THE PURPOSES FOR WHICH COMBINATION IS LAWFUL.

For combinations of employers to blacklist see *Infra* Chapter XXII, *Blacklisting*.

⁷⁴ *Willner v Silverman*, (Md.), 71 Atl. 962; *Connett v United Hatters of North America*, (N. J.) 74 Atl. 188.

⁷⁵ *Iron Moulders' Union v Allis-Chalmers Co.*, 166 Fed. 45, 50, 20 L. R. A. N. S. 315.

⁷⁶ See *Supra* Chapter II, *Right of*

Workingmen to Combine and Purposes for Which Combination is Lawful.

⁷⁷ *Maryland*.—*Wilner v Silverman*, 71 Atl. 962.

Michigan.—*Beck v Railway Teamsters' Protective Union*, 118 Mich. 497, 77 N. W. 13, 74 Am. St. Rep. 44, 42 L. R. A. 407.

New Jersey.—*Atkins v W. & A. Fletcher Co.*, 65 N. J. Eq. 658, 55 Atl. 1074.

New York.—*Sinsheimer v United Garment Workers*, 77 Hun. 215, 28 N. Y. Suppl. 503.

Ohio.—*New York etc. R. Co. v Schaefer*, 65 Ohio St. 394, 62 N. E. 439, 87 Am. St. Rep. 628.

like combinations of laborers, must employ lawful methods for the attainment of lawful purposes.⁷⁹ If the object to be obtained is unlawful,⁷⁹ or unlawful means are used to gain a lawful end,⁸⁰ the combination is necessarily unlawful. It has been said that in the fullest recognition of the equality and mutuality of their rights and restrictions lies the peace of capital and labor, for so they like nations with equally well drilled and equipped armies and navies, will make and keep treaties of peace, in the fear of the cost and consequences of war.⁸¹

§ 267. To fix rate of wages.

As was shown in a previous chapter the right of workmen to combine for the purpose of maintaining or advancing the rate of wages has been recognized in this country from an early date,⁸² and inasmuch as a combination of employes for such purpose is lawful, employers have the correlative right to combine to fix a rate which they are willing to pay. The law is the same for both.⁸³

§ 268. To resist combination of workmen to advance wages.

In Pennsylvania, before any legislation on the subject, it was held that a combination of workmen to raise the price of labor, or of employers to depress it, was unlawful, because it was considered that such combination interfered with the price, which would otherwise be regulated by supply and demand. This interference it was considered, was in restraint of trade or business and prejudicial to the public at large and made an artificial price. So far as workmen were concerned, this rule was changed by statute which legalized combinations of workmen to advance the rate of wages, but no legis-

United States.—Goldfield Consolidated Mines Co. v Goldfield Miners' Union, 159 Fed. 500.

England.—Reg. v Hewitt, 5 Cox C. C. 162; Reg. v Duffield, 5 Cox C. C. 401; Reg. v Rowlands, 5 Cox C. C. 461, 17 Ad. & El. N. S. 671.

⁷⁹ Wilner v Silverman, (Md.) 71 Atl. 962; Sinsheimer v United Garment Workers, 77 Hun. 215, 28 N. Y. Suppl. 503.

⁷⁹ McCord v Thompson-Starrett Co., 113 N. Y. Suppl. 385.

⁸⁰ See Atkins v W. & A. Fletcher

Co., 65 N. J. Eq. 658, 55 Atl. 1074.

⁸¹ Judge Baker in Iron Moulders' Union v Allis-Chalmers Co., 166 Fed. 45, 52, 20 L. R. A. N. S. 315.

⁸² See Supra Chapter II, *Right of Workingmen to Combine and Purposes for Which Combination is Lawful*, Section 10.

⁸³ Beck v Railway Teamsters' Protective Union, 118 Mich. 497, 77 N. W. 13, 74 Am. St. Rep. 44, 42 L. R. A. 407; Lohse Patent Door Co. v Fuelle, 215 Mo. 421, 114 S. W. 997, 1005, 22 L. R. A. N. S. 607.

lation was enacted in respect of combinations of employers. The question arose in a number of decisions in the Supreme Court, whether a combination of employers to resist the demand of a combination of employes to advance the rate of wages was lawful. It was contended that employers who entered into such an agreement were subject to all the common law liability of conspirators in their attempts to resist the demand for increased wages, in other words that while there could be a combination among workmen to advance wages there could be no corresponding combination of employers to resist such demand. The court denied the correctness of this theory and upheld the validity of the combination. It was not, it was said, a combination to resist an advance which would naturally follow a limited supply in the market, because the supply was artificially limited by the combination of workmen wholly withdrawing their labor from the market. The combination was not to interfere with the price of labor as determined by supply and demand, but to defend themselves against a demand made altogether regardless of the price as regulated by the supply. "The element of an unlawful combination to restrain trade because of greed of profit to themselves, or of malice towards plaintiff or others, is lacking, and this is the essential element on which is founded all the decisions as to common law conspiracy in this class of cases; and, however unchanged may be the law as to combinations of employers to interfere with wages, where such combinations take the initiative they certainly do not depress a market price, when they combine to resist a combination to artificially advance price." In applying the doctrine enunciated, it was held that an association of employers of labor engaged in building might resist a combination of striking workmen engaged in various building trades, to obtain shorter hours of labor at the same wages, by procuring those dealing in supplies used by builders to refuse to sell supplies to builders not members of the association who acceded to the demands of the workmen, and that a builder who had complied with the demands of the workmen and in consequence was to some extent prevented from obtaining supplies had no cause of action.⁸⁴ So in a Canadian case it was said: "If workmen have the right to combine to secure advanced wages

⁸⁴ *Cote v Murphy*, 159 Pa. St. 419, (Pa.), 28 Atl. 195; *Buchanan v Kerr*, 28 Atl. 190, 39 Am. St. Rep. 684, 23 (Pa.), 28 Atl. 195.
L. R. A. 135; *Buchanan v Barnes*,

their employers cannot possibly be guilty of any wrong, either private or public, in clubbing together for the purpose of resisting their demand, and by the same means of protecting themselves from loss.”⁸⁵

§ 269. To lock out employees.⁸⁶

An association of employers have the right to lock out all operatives connected with a labor union because of demands which they consider unjust, made by the members of the union upon one of the employers.⁸⁷ And they may in anticipation of a strike to be ordered by the union to which their employees belong, agree to lock out any of the latter who are members of it if the strike takes place. Such an agreement is not invalid as in restraint of trade or of the freedom of making contracts, and a further undertaking that anyone of them who breaks the agreement shall forfeit a designated sum as unliquidated damages is also valid and enforceable.⁸⁸ So an association of employers may lock out all members of a union, which has repudiated an agreement to submit to arbitration, trade disputes between the members of the union and members of the association of employers.⁸⁹

§ 270. To refuse employment to designated classes of workmen, or coerce others into refusing them employment.

Broadly speaking, employers have the right to combine to refuse employment to any kind or class of workmen just as fully as employees have the right to combine to refuse to be employed by any employer employing men whom they disapprove or conducting his business contrary to their views.⁹⁰ Thus, employers have the right to combine to refuse employment to members of a union, because of demands made by the union on one of their association, which they consider unjust,⁹¹ and may agree not to hire members of a

⁸⁵ *Lefebvre v Knott*, 32 Que. Sup. Ct. 40, 13 Can. Cr. Cas. 223, 229.

⁸⁶ For correlative right of employees to strike see *supra* Chapter IV, *Strikes*.

⁸⁷ *Sinsheimer v United Garment Workers*, 77 Hun. 215, 59 N. Y. St. 503, 28 N. Y. Suppl. 321.

⁸⁸ *Lefebvre v Knott*, 32 Que. Sup. Ct. 40, 13 Can. Cr. Cas. 223.

⁸⁹ *McCord v Thompson-Starrett Co.*, 113 N. Y. Suppl. 385, (affirming on this point, 112 N. Y. Suppl. 902).

⁹⁰ *Atkins v W. & A. Fletcher Co.*, 65 N. J. Eq. 658, 55 Atl. 1074; *New York etc. R. Co. v Schaeffer*, 65 Ohio St. 394, 62 N. E. 439, 87 Am. St. Rep. 628; *Goldfield Consolidated Mines Co. v Goldfield Miners' Union*, 159 Fed. 500.

⁹¹ *Sinsheimer v United Garment*

union, whose members are striking for higher wages, and who have committed depredations on the property of the employers with the sanction of the union which refuses to allow the employers to station watchmen about their plants."⁹ So it has been said that they may agree not to employ workmen who have engaged in a strike against one of them or who have shown themselves to be negligent, dishonest or incompetent."¹⁰ And it has been held that a court of equity has no jurisdiction to enjoin the officers of a company whose workmen have struck, from continuing a conspiracy among themselves and with other employers not to hire them in order that the strikers may be forced to resume work for the company on its own terms. Leaving open the question whether any cause of action, at all exists, it was said that there were "no approved precedents in equity for enjoining the defendants from continuing such a conspiracy, or for compelling the defendants either to employ the petitioners, or to procure employment for them with others," and that "the rights which the petitioners allege the defendants were violating at the time the petition was filed are personal rights as distinguished from rights of property."¹¹ On the proposition that the rights of complainants are not property rights the court, was according to the great weight of authority, in error, as is shown by its later decisions," but the decision is nevertheless sustainable on the grounds, first, that the combination was lawful, and second, that even if unlawful, no power resides in any court to compel one man to employ another, any more than it can compel one man to

Workers, 77 Hun. 215, 59 N. Y. St. 503, 28 N. Y. Suppl. 321.

⁹ Goldfield Consolidated Mines Co. v Goldfield Miners' Union, 159 Fed. 500.

¹⁰ New York etc. R. Co. v Schaeffer, 65 Ohio St. 394, 62 N. E. 439, 87 Am. St. Rep. 628; Minshall, C. J. dissenting from the view that companies may enter into an agreement not only to employ persons who have engaged in a strike on the ground that such agreement is against public policy, as tending to encourage idleness and cause poverty among workmen, by depriving them of the means of earn-

ing a livelihood for themselves and their families. Each company, he said, should be at liberty to employ such persons as in its judgment it deems best, unrestrained by any agreement with other companies." To recognize the validity of such agreement would in effect, make engaging in a strike an offence punishable by exclusion from employment."

¹¹ Worthington v Waring, 157 Mass. 421, 32 N. E. 744, 34 Am. St. Rep. 294, 20 L. R. A. 342.

¹² See Supra Chapter VII, *Boycotts of Labor and the Substantive Law Relating Thereto*, Section 84.

work for another. On the other hand a combination of employers to prevent the workmen of one of their number, who are on a strike, from obtaining any employment except from their former employer, by molesting, intimidating or annoying other employers, who would, except for such acts give employment to the striking employes, would constitute an unlawful conspiracy, which should be enjoined unless the more or less definite amount of damages suffered and the pecuniary responsibility of the members of the combination would relegate the parties injured to a court of law." The correctness of this proposition is not open to dispute. Striking workmen have the right to use peaceable persuasion to induce other workmen to aid them in their strike by not continuing in or by not accepting employment from the person against whom the strike is in operation, but have no right to use violence or intimidation for that purpose." The rights of employers in the choice of means to be used in effecting their object can be no greater than those of the employes.

§ 271. To compel workmen to join particular union.

A combination by employers embracing nearly all the contractors in the building trades in a large city, to compel workmen to join a designated union by refusing them employment unless they did so, is void as against public policy, because it operates generally upon craftsmen in the trade and imposes upon them as a penalty for refusing to join the union the practical impossibility of obtaining employment at their trade and thereby gaining a livelihood." The rule here laid down is in accordance with the rule supported by the weight of authority in regard to combinations of workmen to compel other workmen to join their union."

§ 272. Internal administration of association—Rules and by-laws.

Like other voluntary associations, an association of employers, for the facilitation of the business in which its members are engaged and for the settlement of industrial disputes with employers of its

"See *Atkins v W. & A. Fletcher Co.*, 65 N. J. Eq. 658, 55 Atl. 1074, in which the court stated this proposition as a mere expression of opinion and said that it was not necessary to decide it.

"See *Supra Chapter V, Acts in*

Furtherance of Strike, Sections 61, 62, 63.

"*McCord v Thompson-Starrett Co.*, 113 N. Y. Suppl. 385, (reversing 112 N. Y. Suppl. 902).

"See *Supra Chapter IV, Strikes*, Section 40.

members, may make reasonable rules for the government of its members. Of this character is a rule prohibiting members from employing members of a union which repudiated an agreement to arbitrate trade differences.¹ On the other hand a rule prohibiting members of the association from employing workmen unless they join a certain labor union is against public policy and void.²

§ 273. —Disciplining members.

A combination of employers, the purpose of whose organization is the facilitation of the business in which the members are engaged and the settlement of industrial disputes with employes of its members, cannot enforce payment of a penalty by one of the members for the infraction of an order which it had no power to make. To collect a penalty for disobedience of an order it must appear that the order was one which was rightfully and lawfully given. The rule was applied here, in the case of an order that no workman should be employed by any member of the association unless he joined a particular union.³

¹ McCord v Thompson-Starrett Co., 113 N. Y. Suppl. 385.
112 N. Y. Suppl. 902.

² McCord v Thompson-Starrett Co.

³ McCord v Thompson-Starrett Co. 113 N. Y. Suppl. 385.

CHAPTER XXII.

BLACKLISTING.

§ 274. Definition.

§ 275. Liability for blacklisting in absence of special legislation—Substantive liability.

§ 276. Pleading and practice in actions to enforce liability.

§ 277. Summary of legislation prohibiting blacklisting.

§ 278. Operation and construction of statutes.

§ 274. Definition.

Blacklists have been variously defined as follows: "Any list of persons, who are for any reason deemed objectionable by the makers of the list."⁴

"A list of persons marked out for special avoidance, antagonism or enmity, on the part of those who prepare the list or those among whom it is intended to circulate; as where a trade-union blacklists workmen who refuse to conform to its rules, etc. It is sometimes used by strikers against citizens to deter them from dealing with the party or parties struck against."⁵

"The practice of one employer presenting to another the names of employes for the purpose of furnishing information concerning his standing as an employe."⁶

Perhaps the definition last given is closer to the popular conception of the meaning of the term than the others. All the great mass of recent legislation, without exception, is directed against the "blacklisting" of employes by employers.⁷

Cross References:

For combinations of employers generally see Supra Chapter XXI, COMBINATIONS OF EMPLOYERS.

For boycotts see Supra Chapters VII, BOYCOTTS OF CAPITAL AND THE SUBSTANTIVE LAW RELATING THERETO. IX, BOYCOTTS OF LABOR.

⁴Century Dictionary; 5 Cyc. p. 578.

⁵Cogley on Strikes & Lockouts, p. 293 (Quoted in Mattison v Lake Shore, etc. R. Co., 3 Ohio Dec. 526, 529.

⁶State v Justus, 85 Minn. 279, 88 N. W. 759, 89 Am. St. Rep. 550, 56 L. R. A. 757.

⁷See Infra this chapter, section 277.

§ 275. Liability for blacklisting in absence of special legislation—
Substantive liability.

An employer has the right to keep a record stating the grounds for discharging employes named therein,⁸ and to notify other employers that it keeps such a book and that they may inspect it,⁹ but in the exercise of this right, the duty is imposed to make a truthful statement of the grounds of discharge.¹⁰ Thus if by an arrangement among employers, a record is to be kept by them of the causes of the discharge of their employes and when they are discharged for certain causes, the others will not employ them, it becomes important that the record kept should contain a true statement of the cause of an employe's discharge. A false entry on the record may utterly destroy and prevent him from making a livelihood at his chosen business.¹¹ Another very important qualification of the right is that it must be exercised from a proper motive and not to gratify malice,¹² and the circulation of a false statement as to the cause of an employe's discharge will be regarded as intended to injure, and a malicious act.¹³ According to elementary and well settled principles, any malicious interference with the business or occupation of another is an actionable wrong, whether by an individual or by a number of individuals conspiring together.¹⁴ The law is vigilant to see that the right and opportunity to work, which is the most valuable asset of the laboring man shall not be unjustifiably interfered with by employers acting either as indi-

⁸ *Hundley v Louisville etc. R. Co.*, 105 Ky. 197, 48 S. W. 429, 88 Am. St. Rep. 298; *Hebner v Northern R. Co.*, 78 Minn. 289, 80 N. W. 1128, 79 Am. St. Rep. 387; *Boyer v Western Union Telegraph Co.*, 124 Fed. 246. See also *Missouri Pacific etc. R. Co. v Richmond*, 73 Tex. 794, 11 S. W. 555, 15 Am. St. Rep. 794.

⁹ *Boyer v Western Union Tel. Co.*, 124 Fed. 246.

¹⁰ *Hundley v Louisville etc. R. Co.*, 105 Ky. 197, 48 S. W. 429, 88 Am. St. Rep. 298; *Willner v Silverman*, (Md.), 71 Atl. 962.

¹¹ *Hundley v Louisville, etc. R. Co.*,

105 Ky. 197, 48 S. W. 429, 88 Am. St. Rep. 298.

¹² *Hundley v Louisville etc. R. Co.*, 105 Ky. 197, 48 S. W. 429, 88 Am. St. Rep. 298; *Willner v Silverman*, (Md.), 71 Atl. 962.

¹³ *Hundley v Louisville etc. R. Co.*, 105 Ky. 197, 48 S. W. 429, 88 Am. St. Rep. 298.

¹⁴ *Willner v Silverman*, (Md.), 71 Atl. 962. And see *Chipley v Atkinson*, 23 Fla. 206, 1 So. 943, 11 Am. St. Rep. 370; *Walker v Cronin*, 107 Mass. 555; *Temperton v Russell*, (1893) 1 Q. B. 715, 62 L. J. Q. B. 412, 69 L. T. 78; *Keeble v Hickingill*, 11 East 574.

viduals or in combinations.¹⁵ In order to authorize a recovery of damages by an employe because of the making of an untruthful statement in a blacklist by his employer, and a conspiracy with other employers not to hire employes discharged for cause, it is necessary to a recovery that the conspiracy be executed,¹⁶ for it is well settled that a conspiracy gives no right of action for damages unless executed.¹⁷ It is likewise necessary that damages should actually result from the conspiracy.¹⁸ Thus the sending out of a circular by a manufacturer whose workmen are on a strike requesting the members of an association of employers to which he belongs to refuse employment to the strikers, in accordance with the articles of agreement of the association binding them to do so, gives them no cause of action against such manufacturer for damages for loss of employment, where during the entire time they were out of employment, their wages were paid them by the union to which they belonged, and which approved the strike.¹⁹ As regards relief by injunction it has been held that an employer will not be enjoined from keeping a book showing that it had discharged employes therein named for belonging to the union, nor from notifying other employers that it keeps such a book and that they can inspect it.²⁰

§ 276. —Pleading and practice in actions to enforce liability.

Employes who have been placed on a blacklist by their employer cannot, it seems, join in an action for damages, but each must sue in his own behalf alone.²¹ Case is the proper form of action for damages sustained by an employe from blacklisting,²² and in an action by a discharged employe against his employer for damages for making a false record of the cause of his discharge, and entering into a conspiracy with other railroad companies, not to hire any employe discharged for cause, and by such acts making it impos-

¹⁵ Willner v Silverman, (Md.), 71 Atl. 962.

¹⁶ Hundley v Louisville etc. R. Co., 105 Ky. 197, 48 S. W. 429, 88 Am. St. Rep. 298.

¹⁷ See *Conspiracy*, 8 Cyc. 645, 675 and cases cited.

¹⁸ Willner v Silverman, (Md.), 71 Atl. 962; Bradley v Pierson, 148 Pa. St. 302, 42 Atl. 65.

¹⁹ Bradley v Pierson, 148 Pa. St. 302, 42 Atl. 65.

²⁰ Boyer v Western Union Tel. Co., 124 Fed. 248.

²¹ Worthington v Waring, 157 Mass. 421, 34 Am. St. Rep. 294, 20 L. R. S. 342.

²² Willner v Silverman, (Md.), 71 Atl. 962.

sible for him to obtain employment, it must be alleged that he had sought and been refused employment by reason of the acts complained of. The agreement or conspiracy charged does not injure plaintiff unless carried out.²³ This as previously stated, is in accordance with well settled principles of the law relating to civil conspiracy. An unexecuted conspiracy forms no basis for an action for damages.²⁴

§ 277. Summary of legislation prohibiting blacklisting.

Statutes which vary considerably in their provisions have been enacted in many states, the object of which is to prevent the so-called "blacklisting" of employes by employers by making them liable in damages, or to criminal prosecutions, or both. On account of this variance in the provisions it will be impossible to condense them very much, and although they have so far received a very limited amount of consideration by courts of last resort, it is nevertheless believed that they are of sufficient importance to incorporate in this chapter. In *Alabama* it is provided that any employer who maintains a blacklist, or notifies any other employer that any person has been blacklisted by him, or who uses any other similar means to prevent such person being employed, shall be guilty of a misdemeanor and liable to fine or imprisonment.²⁵ In *Connecticut*, it is provided that every employer who shall blacklist an employe with intent to prevent him from procuring other employment shall be subject to fine.²⁶ In *Georgia*, it is provided that if any railroad company or other corporation or its agents after discharging an employe shall prevent or attempt to prevent him by word, writing, sign or other means, directly or indirectly from obtaining employment, such employer or agent shall be guilty of a misdemeanor, and liable in penal damages to the discharged employe, but that the statute shall not prevent such company or corporation or its agent from giving a truthful statement of the reasons for the discharge to the employer to whom the discharged employe applies for employment, and shall furnish to such discharged employe on his application a true copy of such written statement.²⁷ It is further provided that if any railroad company or other corpora-

²³ *Hundley v Louisville etc. R. Co.*, 105 Ky. 197, 48 S. W. 429, 88 Am. St. Rep. 298.

and cases cited.

²⁵ Code Ala. 1907, § 6398, § 6399.

²⁶ Gen. St. Conn. 1902, § 1298.

²⁴ See *Conspiracy*, 8 Cyc. 645, 675,

²⁷ Penal Code Ga. 1895, § 128.

tion shall authorize or permit any of its officers, agents or employes to commit any of the acts prohibited, it shall be liable in treble damages to the employe so prevented from obtaining employment.²⁸ In *Iowa*, it is provided that if any employer or his agent after discharging an employe, shall prevent or attempt to prevent him by word or writing of any kind from obtaining employment except by furnishing in writing upon request a truthful statement as to the cause of his discharge, he shall be liable to a fine and for all damages to such employe;²⁹ and that if any employer shall authorize or allow any of his agents to blacklist or attempt by word or writing or any other means to prevent an employe who has been discharged or has voluntarily left the service from obtaining employment except as provided in the paragraph just set out, he shall be liable to treble damages to such employe.³⁰ In *Montana*, the statutes are the same as those of Iowa, except that the first section of the Montana statutes differs from the first section of the Iowa statutes in making the employer liable for punitive damages,³¹ and except that the second section of the Montana statutes differs from the second section of the Iowa statutes in making the employer criminally liable, and liable to punitive damages instead of treble damages.³² In *Indiana* the provisions are the same as those of Montana except that the second section of the Indiana statute differs from the second section of the Montana statute in omitting to make the employer criminally liable.³³ In *Minnesota*, it is made unlawful for any two or more employers to combine or agree to combine to interfere with any person in procuring employment, or to secure an employe's discharge by threats, promises, circulating blacklists, or any other means, or for any company or corporation or an agent or employe thereof, to blacklist a discharged employe, or by word or writing to prevent a discharged employe, or one who has voluntarily left the service from obtaining employment elsewhere; and any person or corporation violating such provisions shall be guilty of a misdemeanor.³⁴ In *Kansas*, it is provided that an employer, after having discharged any employe, shall not prevent or attempt to prevent him by word, sign or writing of any kind whatsoever from obtain-

²⁸ Penal Code Ga. 1895, § 129.

²⁹ Ann. Code Iowa, 1897, § 5027.

³⁰ Ann. Code Iowa 1897, § 5628.

³¹ Montana Codes 1895, Pol. Code, § 3390.

³² Montana Codes 1895, Pol. Code § 3391.

³³ Horner's Ann. Ind. St. 1901, § § 5206, p. 5206 q.

³⁴ Rev. Laws Minn. 1905, § 5097.

ing employment except by furnishing in writing on request the cause of such discharge,³⁵ that any employer, his agent or employe, who shall violate the provisions of the act shall be guilty of a misdemeanor and punishable with fine and imprisonment,³⁶ and that an employer who violates the provisions of the act shall be liable to the party injured for treble damages and a reasonable attorney fee.³⁷ In *North Dakota* it is provided that every employer of labor and agent or employe thereof, and every person or any corporation on behalf of such corporation who exchanges, with or furnishes or delivers to any other corporation or any officers, agent, employe or person thereof, any blacklist is guilty of a misdemeanor.³⁸ In *Utah* the constitution prohibits "the exchange of blacklists by railroad companies or other corporations, associations or persons,"³⁹ declares blacklisting a crime, and that the legislature shall provide for the enforcement of the section declaring it a crime.⁴⁰ And it is provided by statute that no employer shall blacklist or publish or cause to be blacklisted or published any employe discharged or voluntarily leaving the service of the employer in order to prevent him from engaging in or securing employment,⁴¹ and that if any person or any officer or agent of an employer shall commit any of the acts mentioned for the purposes mentioned or shall in any manner conspire or contrive, by correspondence or otherwise to prevent such employe from securing employment, he shall be guilty of a felony.⁴² In *Colorado*, the statutory provisions are the same except that they are limited to discharged employes,⁴³ and make a violation of the provisions a misdemeanor.⁴⁴ In *Texas*, the statutes prohibit any corporation or receiver thereof, or any agent or officer of such corporation or receiver from blacklisting, preventing or attempting to prevent by word, writing, sign, list or other means directly or indirectly, any discharged employe, or any employe who may have voluntarily left the corporation's service, from obtaining employment with any other employer, except by truthfully stating in writing on request of such former employe the reason why such employe was discharged or his relationship to such company ceased, which state-

³⁵ Gen. St. Kan. 1905, § 4026.

³⁶ Gen. St. Kan. 1905, § 4028.

³⁷ Gen. St. Kan. 1905, § 4029.

³⁸ Rev. Codes N. D. 1899, § 7042.

³⁹ See Rev. St. Utah 1898, p. 65, Art. 16, § 4.

⁴⁰ Rev. St. Utah, 1898, p. 61, Art. 12, § 19.

⁴¹ Rev. St. Utah, 1898, § 1340.

⁴² Rev. St. Utah, 1898, § 1341.

⁴³ Mills Ann. St. Colo. 1891, § 239.

⁴⁴ Mills Ann. St. Colo. 1891, § 340.

ment if true shall never be used as the cause of an action for libel either civil or criminal. For any violation of these provisions foreign corporations shall be denied the right of doing business in the State, and any person, company or corporation committing a violation of the provisions, shall forfeit a penalty, and shall likewise be punishable by imprisonment as for a misdemeanor.⁴⁶ In *Wisconsin*, it is provided that if two or more employers combine or agree to combine to prevent a person from obtaining employment, or to procure his discharge by threats, promises, circulating or causing blacklists to be circulated; or who after discharging an employe shall prevent or attempt to prevent him from obtaining employment, or who shall permit or allow any agent to blacklist any discharged employe, or one who has voluntarily left the service of his employer, to circulate a blacklist of such employe to prevent his obtaining employment, shall be punishable by a fine. Nothing in the statute shall prohibit an employer from giving to another employer to whom a discharged employe has applied for employment, or to any bondsman or surety, a truthful statement of the reasons for such discharge, on request of the employe.⁴⁷ While this summary is very probably not exhaustive of the legislation against blacklisting, and should in no case be relied on without an examination of recent session laws, for changes which are continually being made in the legislation relating to capital and labor, it is at least sufficient to give a fairly accurate understanding of the attitude towards blacklisting, which the legislatures of the various states have assumed.

§ 278. Operation and construction of statutes.

The purpose of provisions of the character under consideration, it has been said, is to protect employes in the enjoyment of those natural rights and privileges guaranteed by the constitution, namely, the right to sell their labor and acquire property thereby.⁴⁸ In *Minnesota*, a statute similar to the one now existing in that state and set out in the previous section, provided that "No company, corporation or partnership shall authorize or allow any of its or their agents to, nor shall any of its or their agents blacklist any

⁴⁶ General Laws Texas, 1907, Ch. LXVII pp 143, 144.

⁴⁷ State v Justus, 85 Minn. 279, 88 N. W. 759, 89 Am. St. Rep. 550, 56

⁴⁸ Sanborn & Berryman's Ann. St. L. R. A. 757.
Wis., § 4466 b.

discharged employe, or by word of writing seek to hinder, or restrain such discharged employe or any employe who may have voluntarily left such company's or persons service from obtaining employment from any other person or company," and makes a violation of this provision a misdemeanor. In a prosecution based on this statute it was held that as it deals with the question of an employer influencing or coercing the action of employes who voluntarily leave his employ, it is within the subject suggested by the title of the act, to wit; "An act to prohibit the practice of blacklisting and the coercing and influencing of employes by their employers."⁴⁸ To a further objection to the statute on constitutional grounds it was held that such statute is not objectionable on the ground that it has application only to partnerships or corporations as distinguished from individual employers. It was said that while the word person is omitted from the first part of the section, yet it is used in the latter part in such connection that it becomes necessary either to drop the word out of the section entirely, or to supply it in connection with the words company, corporation or partnership.⁴⁹ It was also held not objectionable as applying to employers only and not to employes. Employers, as distinguished from employes, it was said do not constitute a class within the constitutional prohibition. The acts which are declared unlawful by the statute are peculiar to employers of labor. The act being applicable to all members of the class is not invalid because limited to that class.⁵⁰ Nor was the statute considered in violation of the 14th amendment. It was held that it necessarily implied that the acts therein denounced were with a malicious intent, though not expressly characterized as such. The statute does not seek to prohibit an employer from communicating to other employers the nature and character of his employes, when the facts would be for their interests.⁵¹

⁴⁸ State v Justus, 85 Minn. 279, 88 N. W. 759, 89 Am. St. Rep. 550, 56 L. R. A. 757.

⁴⁹ State v Justus, 85 Minn. 279, 88 N. W. 759, 89 Am. St. Rep. 550, 56 L. R. A. 757.

⁵⁰ State v Justus, 85 Minn. 279, 88 N. W. 759, 89 Am. St. Rep. 550, 56 L. R. A. 757.

⁵¹ State v Justus, 85 Minn. 279, 88 N. W. 759, 89 Am. St. Rep. 550, 56 L. R. A. 757.

CHAPTER XXIII.

INTERNAL ADMINISTRATION OF LABOR UNIONS—CONSTITUTIONS, RULES AND BY-LAWS.

- § 279. Power to adopt—In general.
- § 280. For government and discipline of members.
- § 281. For government and discipline of local subdivisions and branches.
- § 282. For collection and distribution of benefit funds.
- § 283. For presentation of claim for benefits to designated officers and for appeal to governing body.
- § 284. Making decision of domestic tribunal on claim final.
- § 285. As affected by general law and public policy—Statement of rule.
- § 286. Applications of rule.
- § 287. Operation and effect—As a contract.
- § 288. As conferring property rights.
- § 289. Relation of constitution to rules and by-laws.
- § 290. Relation of by-laws to resolutions and customs.
- § 291. Necessity for adoption of rules and by-laws.
- § 292. Amendment of rules and by-laws.
- § 293. Evidence of rules and by-laws—Judicial notice.

§ 279. Power to adopt.—In general.

Labor unions like other voluntary associations have the power to adopt constitutions, rules and by-laws.⁵³ The right of labor unions to make by-laws and rules for the admission of members is unquestionable.⁵⁴ They may for their own interests make reasonable regulations as to how and whom they will instruct in the skill of their trade, and they cannot be compelled to teach others against their will.⁵⁴ So they may make rules for the bona fide purpose of protecting their funds from claims which may be avoided and such rules are not illegal because incidentally to some extent in restraint of trade, provided that their provisions go no farther than is reasonable and necessary for that purpose.⁵⁵ It has been held

⁵³ See *Associations*, 4 Cyc 305, and cases cited. And see cases cited *Infra* in this and subsequent sections in this chapter.

⁵⁴ *Mayer v Journeymen Stone Cutters' Ass'n*, 47 N. J. Eq. 519, 20 Atl.

492. And see *Infra* chapter XXV, *Membership*, Section 302.

⁵⁴ *Parker v Bricklayers' Union No. 1*, 21 W. L. B. 223, 10 Ohio Dec. 458.

⁵⁵ *Swaine v Wilson*, 24 Q. B. D. 252, 59 L. J. Q. B. 76, 69 L. T. 309.

by the English Court of Appeal,⁵⁶ reversing a lower court decision,⁵⁷ and overruling another decision,⁵⁸ that rules enacted by a trade union for the provision of funds for the election and maintenance of representatives in parliament are void as being beyond the power of a trade union as defined by the English statutes.⁵⁹

§ 280. —For government and discipline of members.⁶⁰

Subject to limitations to be considered in a subsequent section,⁶¹ labor unions have the undoubted right to make rules and by-laws for the government of their members,⁶² and for the regulation of their conduct towards each other in matters affecting the general interests of the body,⁶³ and to enforce observance of such rules and by-laws may make disobedience thereof punishable by fine, suspension or expulsion according to the gravity of the of-

⁵⁶ *Osborne v Amalgamated Railway Servants*, L. R. (1909) 1 Ch. 163.

⁵⁷ 24 T. L. R. 827.

⁵⁸ *Steele v South Wales Miners' Federation* (1907), 1 K. B. 361, 76 L. J. K. B. 333, 96 L. T. 260, 23 T. L. R. 228.

⁵⁹ *Osborne v Amalgamated Society of Railway Servants*, L. R. (1909) 1 Ch. 163. And see *Supra* Chapter II, *The Right of Workingmen To Combine and the Purposes for Which Combination is Lawful*, Section 14.

⁶⁰ Exercise of disciplinary measures as affecting rights of third persons see *Supra* Chapter XI, *Exercise by Union of Disciplinary Measures as Affecting Rights of Third Parties*.

⁶¹ See *Infra*, this chapter, section 291.

⁶² *Florida*.—*Jetton-Dehkle Lumber Co. v Mather*, 53 Fla. 969, 43 So. 590.

Minnesota.—*Gray v Building Trades Council*, 91 Minn. 171, 97 N. W. 663, 103 Am. St. Rep. 477, 63 L. R. A. 753. And see *Bohn Mfg. Co. v Hollis*, 54 Minn. 223, 55 N. W. 1119, 21 L. R. A. 337, 40 Am. St. Rep. 319.

New Jersey.—*Brennan v United Hatters of North America*, 73 N. J. L. 729, 65 Atl. 165, 9 L. R. A. N. S. 254.

New York.—*Burns v Bricklayers' Benevolent & Protective Union*, 14 N. Y. Suppl. 361, 27 Alb. N. C. 20 (affirming 10 N. Y. Suppl. 916, 24 Abb. N. C. 150).

Ohio.—*Brown Mfg. Co. v Local Union No. 76*, 12 Ohio Dec. N. P. 753.

Oregon.—*Longshore Printing & Publishing Co. v Howell*, 26 Ore. 527, 38 Pac. 547, 46 Am. St. Rep. 640, 28 L. R. A. 464.

Pennsylvania.—*Patterson v Building Trades Council*, 11 Pa. Dist. Rep. 500.

United States.—*Wabash etc. R. Co. v Hannahan*, 121 Fed. 563. And see *Hitchman Coal Co. v Mitchell*, 172 Fed. 963.

And see *Associations*, 4 Cyc 305.

⁶³ *L. D. Willcutt & Sons Co. v Driscoll*, 200 Mass. 110, 85 N. E. 987; *Patterson v Building Trades Council*, 11 Pa. Dist. Rep. 500.

fense." As has been said in a well-considered case, the right of labor unions by organic agreement to subject the individual members to rules, regulations, and conduct, prescribed by the majority, is no longer an open question in the jurisprudence of this country. The will of the individual must yield to the will of the majority, or no organization whether of society into government, capital into combination, or labor into coalition can ever be effectual. The individual must yield in order that the many may receive a greater benefit." This principle has been directly applied in the case of strikes ordered by the union. It has been held that the union may order its members to strike or continue on strike on pain of fine, suspension or expulsion if the strike is a lawful one, and impose such penalties for disobedience of its orders." As regards other

Florida.—*Jetton-Dehkle Lumber Co. v Mather*, 53 Fla. 969, 43 So. 590.

Massachusetts.—See *L. D. Willcutt & Sons Co. v Driscoll*, 200 Mass. 110, 85 N. E. 987, and especially opinion of Sheldon, J. in that case.

Minnesota.—*Gray v Building Trades Council*, 91 Minn. 171, 97 N. W. 663, 103 Am. St. Rep. 477, 63 L. R. A. 753. And see *Bohn Mfg. Co. v Hollis*, 54 Minn. 223, 55 N. W. 1119, 21 L. R. A. 337, 40 Am. St. Rep. 319.

New Jersey.—*Mayer v Journeymen Stone Cutters' Ass'n*, 47 N. J. Eq. 519, 20 Atl. 492.

New York.—*Burns v Bricklayers' Benevolent & Protective Union*, 14 N. Y. Suppl. 361, 27 Abb. N. C. 20 (affirming 10 N. Y. Suppl. 916, 24 Abb. N. C. 150); *Master Stevedores' Ass'n v Walsh*, 2 Daly 1.

Ohio.—*Moore v Bricklayers Union*, 23 W. L. B. 48, 10 Ohio Dec. 665.

Oregon.—*Longshore Printing & Publishing Co. v Howell*, 26 Ore. 527, 38 Pac. 547, 46 Am. St. Rep. 640, 28 L. R. A. 464.

United States.—*Wabash etc. R. Co. v Hannahan*, 121 Fed. 563; *Thomas v*

Cincinnati etc. R. Co., 62 Fed. 803, 817, 4 Inters. Com. Rep. 788.

Canada.—*Perrault v Gautier*, 28 Can. Sup. Ct. 241, (affirming 6 Q. B. 65). And see *Infra* chapter *Membership*, section 307, et seq.

* *Wabash etc. R. Co. v Hannahan*, 121 Fed. 563.

* *Jetton-Dehkle Lumber Co. v Mather*, 53 Fla. 969, 43 So. 590; *Longshore Printing & Publishing Co. v Howell*, 26 Ore. 527, 38 Pac. 547, 46 Am. St. Rep. 640, 28 L. R. A. 464; *Thomas v Cincinnati etc. R. Co.*, 62 Fed. 803, 807, 4 Inters. Com. Rep. 788; *In Re charge to grand jury*, 62 Fed. 828; *Mayer v Journeymen Stone Cutters' Ass'n*, 47 N. J. Eq. 519, 20 Atl. 492; *Master Stevedores' Ass'n v Walsh*, 2 Daly (N. Y.) 1. See also *Long v Bricklayers' & Masons' International Union*, 17 Pa. Dist. Rep. 984, 990, in which it was said: "Every man rightly enjoys the fullest liberty to take membership in a union, and thereby become subject to its regulations even though these may compel him to enter upon a strike." But see *L. D. Willcutt & Sons Co. v Driscoll*, 200 Mass. 110, 85 N. E. 987,

specific rules, which may be adopted, it has been held that a union may adopt a scale of wages, for which members may work,⁶⁷ and may adopt by-laws providing that any member found guilty by its committee of working for less prices than those fixed by the union, shall forfeit a certain per cent of the price fixed for the same work, the penalty to be collected in the name of the association by process of law.⁶⁸ So a union may adopt rules whereby members are prohibited from working with non-union men,⁶⁹ or for an employer whose methods of conducting his business is antagonistic to the interests of the union,⁷⁰ or for employers who do not pay their employes weekly,⁷¹ and for the apportionment of apprentices among employers of its members according to the number of workmen.⁷² By parity of reasoning the members may bind themselves as to their membership and rights in such societies, and the funds of the same, by the constitution, and by-laws of the association which they adopt, or subscribe to after adoption.⁷³

a case considered at length in a previous chapter (sections 149, 150), and an attempt made to show the fallacy of its reasoning.

⁶⁷ Longshore Printing & Publishing Co. v Howell, 26 Ore. 527, 38 Pac. 547, 46 Am. St. Rep. 640, 28 L. R. A. 464.

⁶⁸ Master Stevedores' Ass'n v Walsh, 2 Daly (N. Y.) 1.

⁶⁹ Florida.—Jetton-Dehkle Lumber Co. v Mather, 53 Fla. 969, 43 So. 590.

Minnesota.—Gray v Building Trades Council, 91 Minn. 171, 97 N. W. 663, 103 Am. St. Rep. 477, 63 L. R. A. 753.

New Jersey.—Mayer v Journeymen Stone Cutters' Ass'n, 47 N. J. Eq. 519, 20 Atl. 492.

New York.—Burns v Bricklayers' Benevolent & Protective Union, 14 N. Y. Suppl. 361, 27 Abb. N. C. 20, (affirming 10 N. Y. Suppl. 916, 24 Abb. N. C. 150).

Ohio.—Parker v Bricklayers' Union No. 1, 21 W. L. B. 223, 10 Ohio Dec. 458.

Pennsylvania.—Erdman v Mitchell, 207 Pa. St. 79, 56 Atl. 327, 99 Am. St. Rep. 738, 63 L. R. A. 534.

Canada.—Perrault v Gautier, 28 Can. Sup. Ct. 241, (affirming 6 Q. B. 65).

⁷⁰ Longshore Printing & Publishing Co. v Howell, 26 Ore. 527, 38 Pac. 547, 46 Am. St. Rep. 640, 28 L. R. A. 464.

⁷¹ Burns v Bricklayers' Benevolent & Protective Union, 14 N. Y. Suppl. 361, 27 Abb. N. C. 20, (affirming 10 N. Y. Suppl. 916, 24 Abb. N. C. 150).

⁷² Longshore Printing & Publishing Co. v Howell, 26 Ore. 527, 38 Pac. 547, 46 Am. St. Rep. 640, 28 L. R. A. 464.

⁷³ Brown v Stoerkel, 74 Mich. 269, 41 N. W. 921, 3 L. R. A. 430; Jetton-Dehkle Lumber Co. v Mather, 53 Fla. 969, 43 So. 590; Brennan v United Hatters of North America, 73 N. J. L. 729, 65 Atl. 165, 9 L. R. A. N. S. 214; Thomas v Cincinnati etc. R. Co., 62 Fed. 803, 817, 4 Inters. Com. Rep. 788. And see Patterson v Building Trades Council, 11 Pa. Dist. Rep. 500;

§ 281. —For government and discipline of local subdivisions or branches.

As the union has power to enact rules and by-laws for the government of its members,⁷⁴ so it has power to enact rules and by-laws for the government of its local branches and subdivisions,⁷⁵ subject of course to the limitation that such rules and by-laws must not be in contravention of general law statutory or organic or against public policy.⁷⁶

§ 282. —For collection and distribution of benefit funds.

Labor unions also have the undoubted right to make rules and by-laws for the collection and distribution of benefits funds,⁷⁷ and the terms and conditions, on which the members shall be entitled to participate in such funds.⁷⁸

§ 283. —For presentation of claim for benefits to designated officers and for appeal to governing body.

It is competent to provide by the by-laws for the presentation of claims for benefits to designated officers,⁷⁹ and that the member presenting the claim, shall, if dissatisfied with their action appeal to the governing board of the organization.⁸⁰ It is but just to the organization that its chief officers have an opportunity to investigate the claim asserted by the member before being harassed by litigation.⁸¹

Parker v Bricklayers' Union No. 1, 21 W. L. B. 223, 10 Ohio Dec. (Reprint) 458; *Wabash etc. R. Co. v Hannahan*, 121 Fed. 563.

⁷⁴ See the preceding section.

⁷⁵ See *Infra* Chapter XXVI, *General and Local Unions*, Sections 347, 348.

⁷⁶ See *Infra* this chapter, sections 285, 286.

⁷⁷ See *Supra* Chapter II, *The Right of Workmen to Combine and the Purpose for Which Combination is Lawful*, Sections 13, 14, and *Infra* Chapter XXV, *Membership*, Section 335 et seq.

⁷⁸ *Conniff v Jomour*, 65 N. Y. Suppl. 317, 31 Misc. 729, and cases cited in preceding note.

⁷⁹ *California*.—*Robinson v Templar*

Lodge, 117 Cal. 370, 49 Pac. 170, 59 Am. St. Rep. 193; *Levy v Magnolia Lodge*, 110 Cal. 297, 42 Pac. 887.

Georgia.—*Harrington v Workmen's Benevolent Ass'n*, 70 Ga. 340.

Indiana.—*Supreme Council Chosen Friends v Forsinger*, 125 Ind. 52, 25 N. E. 129, 21 Am. St. Rep. 196, 9 L. R. A. 505; *Bauer v Samson Lodge K. O. P.*, 102 Ind. 262, 1 N. E. 571.

Maryland.—*Anacosta Tribe v Murbach*, 13 Md. 91, 71 Am. Dec. 625.

Michigan.—*Van Pouck v The Netherlands St. Vincent De Paul Society*, 63 Mich. 378, 29 N. W. 863.

⁸⁰ *Bauer v Samson Lodge, K. O. P.*, 102 Ind. 268, 1 N. E. 571.

⁸¹ *Supreme Council Chosen Friends v Forsinger*, 125 Ind. 52, 25 N. E. 129, 21 Am. St. Rep. 196, 9 L. R. A. 501.

§ 284. —Making decision of domestic tribunal on claim final.

There is, however, considerable conflict of opinion as to whether an association of the character under consideration has power to provide by its constitution rules and by-laws that the determination of a tribunal of the association in respect of the claim of a member for the benefits shall be conclusive and preclude a resort to the courts in case of the member's dissatisfaction with the disposition of his claim. Quite a number of decisions hold that the association has the power,⁸² and some even go further and hold that where the tribunals of the association are vested with the power to hear, and determine disputed claims their decision is final although there is no provision in the constitution or by-laws expressly so providing.⁸³ This latter proposition, however has been denied even in jurisdictions where it is held or said that these associations have power to enact provisions that the decisions of their own tribunals shall be final,⁸⁴ it being said in one case that the adjudication is not final in the absence of provisions so declaring it, notwithstanding any custom to the contrary,⁸⁵ and in another that when one of the parties or his representatives is sought to be made the final judge, courts will not give such a construction to the agreement between the parties as to have that effect, if any other construction is possible.⁸⁶ In support of the view that these associations have the power through the provisions of their constitutions and by-laws to make the decisions of their own tribunals conclusive in respect of claims for benefits, it is said that these are private beneficial institutions, operating on the members only, who for reasons

⁸² *Donelly v Supreme Council, C. B. L.*, 106 Md. 425, 67 Atl. 276, 124 Am. St. Rep. 499; *Anacosta Tribe v Murbach*, 13 Md. 91, 71 Am. Dec. 625; *Van Poucke v The Netherland St. Vincent DePaul Society*, 63 Mich. 378, 29 N. W. 863; *Black & White Smiths' Society v Van Dyke*, 2 Whart. (Pa.) 309, 30 Am. Dec. 263; *Rood v Railway Passenger & Freight Conductors' Mutual Ben. Ass'n*, 31 Fed. 62. And see *Wuerthner v Workingmens' Benevolent Ass'n*, 121 Mich. 90, 70 N. W. 921.

⁸³ *Donally v Supreme Council C. B.*

L., 106 Md. 425, 67 Atl. 276, 124 Am. St. Rep. 499; *Osceola Tribe No. 11 v Schmidt*, 57 Md. 98.

⁸⁴ *Railway Passenger & Freight Conductors Mutual Aid & Benefit Ass'n*, 147 Ill. 138, 35 N. E. 168; *Wuerthner v Workingmen's Benevolent Ass'n*, 121 Mich. 90, 70 N. W. 921.

⁸⁵ *Wuerthner v Workingmen's Benevolent Ass'n*, 121 Mich. 90, 70 N. W. 921.

⁸⁶ *Rood v Railway Passenger & Freight Conductors' Mutual Aid & Benefit Ass'n*, 147 Ill. 138, 35 N. E. 168.

of policy, and convenience affecting their welfare, and perhaps their existence, adopt laws for their government, to be administered by themselves, to which every person who joins them assents; that they require the surrender of no right that a man may not waive, and are obligatory on him only so long as he chooses to recognize their authority;⁸⁷ and that it would very much impair the usefulness of institutions of this kind if they were to be harassed with petty litigation involving claims for benefits, and render the tribunals of the order practically useless.⁸⁸ On the other hand the decided weight of authority, and of reason too, is that these associations have no power to adopt constitutions and by-laws providing that the decisions of their own tribunals in respect of claims of members for benefits shall be final.⁸⁹ The reasons in support of this view may be summarized as follows: First, to hold that the decision of a tribunal of the association is conclusive, is in effect, making one of the parties to a dispute, a final judge in its own cause.⁹⁰

⁸⁷ *Anacosta Tribe v Murbach*, 13 Md. 91, 71 Am. Dec. 625.

⁸⁸ *Donnelly v Supreme Council C. B. L.*, 106 Md. 425, 67 Atl. 276, 124 Am. St. Rep. 499; *Anacosta Tribe v Murbach*, 13 Md. 91, 71 Am. Dec. 625.

⁸⁹ *California*.—*Grimbley v Harold*, 125 Cal. 24, 57 Pac. 558, 73 Am. St. Rep. 19; *Levy v Magnolia Lodge*, 110 Cal. 297, 42 Pac. 887.

Indiana.—*Supreme Council of Chosen Friends v Forsinger*, 125 Ind. 52, 25 N. E. 129, 21 Am. St. Rep. 196, 9 L. R. A. 501; *Supreme Council Order Chosen Friends v Garrigus*, 104 Ind. 133, 3 N. E. 818, 54 Am. Rep. 298; *Bauer v Sampson Lodge*, 102 Ind. 262, 1 N. E. 511.

Minnesota.—*Gasser v Sunfire Office*, 52 Minn. 315, 44 N. W. 252. And see *Whitney v National Masonic Ass'n*, 52 Minn. 378, 54 N. W. 184.

New Jersey.—*Zeliff v Grand Lodge*, K. O. P., 53 N. J. L. 536, 22 Atl. 63.

Ohio.—*Myers v Jenkins*, 63 Ohio St. 101, 57 N. E. 1089, 81 Am. St. Rep. 613.

Pennsylvania.—*Sweeney v Rev. Hugh McLaughlin Ben. Soc.*, 14 W. N. C. 466.

Utah.—*Daniher v Grand Lodge*, A. O. U. W., 10 Utah 110, 37 Pac. 245.

England.—*Edwards v Aberagon Mut. Ship. Ins. Society*, L. R. 1 Q. B. Div. 563. And see the following cases which by analogy support perfectly the rule of the decisions cited in this note. *Wicks v Monihan*, 130 N. Y. 232, 29 N. E. 131, 14 L. R. A. 243; *Wells v Monihan*, 129 N. Y. 161, 29 N. E. 232; *Austin v Searing*, 16 N. Y. 112; *Lloyd v Loring*, 6 Ves. 733.

⁹⁰ *Rood v Railway Passenger & Freight Conductors' Mutual Aid & Benefit Ass'n*, 147 Ill. 138, 35 N. E. 168; *Supreme Council of Chosen Friends v Forsinger*, 125 Ind. 52, 25 N. E. 129, 21 Am. St. Rep. 196, 9 L. R. A. 501, in which it was said: "There is nothing unjust in declaring that parties may appeal to the courts of the country for redress, while there is something of unfairness in a provision which makes

Second, To hold that the association can create a tribunal to settle disputes between it and its members and make the decision of such tribunal final, would be to clothe it with the functions of sovereign power which alone can create legal tribunals,⁹¹ and authorize it to forfeit or confiscate property, a right forbidden to be exercised by Congress or the legislature of any state.⁹²

Third, It is not competent for parties, in advance of any dispute to oust the jurisdiction of the courts by an agreement that the decision of persons named therein shall be final and conclusive. Such an agreement is void,⁹³ and will not be enforced in equity nor sustained as a bar to any action at law or a suit in equity.⁹⁴ The ultimate adjudication of questions of law must remain in the courts unless waived after the rights or the obligations have been incurred.⁹⁵

Any one of the reasons here assigned constitutes ample ground to deny to these associations the power to make final the decisions of their own tribunals, in controversies between the associations and their members involving the determination of property rights.

§ 285. —As affected by general law and public policy,—Statement of rule.

In order that the constitution rules and by-laws of a union may possess validity, they must not be in contravention of the law either common, statutory, or organic, or against public policy,⁹⁶ and

the decision of interested corporate officers final and excludes resort to the judicial tribunals of the land."

⁹¹ *Bauer v Sampson Lodge*, 102 Ind. 262, 268, 1 N. E. 571; *Myers v Jenkins*, 63 Ohio St. 101, 57 N. E. 1089, 81 Am. St. Rep. 613; *Daniher v Grand Lodge A. O. U. W.*, 10 Utah 110, 37 Pac. 245.

⁹² *Wicks v Monihan*, 130 N. Y. 232, 29 N. E. 131, 14 L. R. A. 243.

⁹³ *Supreme Council of Chosen Friends v Forsinger*, 125 Ind. 52, 25 N. E. 129, 21 Am. St. Rep. 196, 9 L. R. A. 501; *Louisville etc. R. C. v Donnegan*, 111 Ind. 179, 12 N. E. 153; *Supreme Council Order Chosen Friends v Garri-gus*, 104 Ind. 133, 3 N. E. 818, 54 Am. Rep. 298; *Bauer v Sampson Lodge*,

102 Ind. 262, 1 N. E. 571; *Kiston v Indianapolis etc. R. Co.*, 88 Ind. 460; *Reed v Washington Ins. Co.*, 138 Mass. 572; *Myers v Jenkins*, 63 Ohio St. 101, 57 N. E. 1089, 81 Am. St. Rep. 613; *In re Morse*, 20 Wall (U. S.) 45.

⁹⁴ *Bacon's Benefit Societies*, section 450.

⁹⁵ *Myers v Jenkins*, 63 Ohio St. 101, 57 N. E. 1089, 81 Am. St. Rep. 613.

⁹⁶ *Louisiana*.—*Schneider v Local Union No. 60*, 116 La. 270, 40 So. 700, 5 L. R. A. N. S. 891, 114 Am. St. Rep. 549.

New York.—*People v New York Benevolent Society of Operative Masons*, 3 Hun. 361, 6 T. & C. 85.

Pennsylvania.—*Purvis v United*

statutes providing that labor unions may devise and adopt ways and means to make rules, regulations, by-laws and resolutions of their order effective, sanction no rules, regulations, by-laws or resolutions to commit wrong. If they attempted to do so, by authorizing interference with the absolute rights of others they would be void as as infringing the Declaration of Rights." As was said in a well considered case: "The obligation or pledge which an initiate in a labor union is required to take is to be construed with reference to the declared purposes of the organization, and is binding only in so far as those purposes are lawful and are to be attained by lawful means, and when such union attempts the accomplishment of an object which is foreign to the purposes for which it is organized, or attempts the accomplishment of those purposes by unlawful means, the initiate or member may properly say: 'I entered into no such contract.' " " Nothing in the rules of a union can justify an act which would be wrong if done by an individual."

§ 286. — — Applications of rule.

In applying the principles stated in the preceding section it is held that any rule or by-law providing for the exercise of disciplinary measures against a member or against a local branch of the union without hearing is void as against public policy. The commonest principles of justice require that no man shall be condemned without a hearing,¹ and a by-law of a musicians' union which in effect, prohibits its members some of whom belong to the militia from playing in military bands, is void as being in restraint of trade and contrary to the army regulations.² So a rule of the Brotherhood of Locomotive Engineers providing "that hereafter,

Brotherhood of Carpenters & Joiners, 214 Pa. St. 344, 63 Atl. 585, 112 Am. St. Rep. 751, 12 L. R. A. N. S. 642.

Texas.—St. Louis etc. R. Co. v Thompson, 113 S. W. 144.

United States.—Toledo etc. R. Co. v Pennsylvania Co., 54 Fed. 730, 19 L. R. A. 387, 5 Inters. Com. Rep. 522.

Canada.—Parker v Toronto Musical Protective Ass'n, 32 Ont. 305.

¹Purvis v United Brotherhood of Carpenters & Joiners, 214 Pa. St. 344,

63 Atl. 585, 112 Am. St. Rep. 751, 12 L. R. A. N. S. 642.

²Schneider v Local Union No. 60, 116 La. 270, 40 So. 700, 5 L. R. A. N. S. 891, 114 Am. St. Rep. 549.

³Greig v National Amalgamated Union of Shop Assistants etc., 22 T. L. R. 274.

¹See *Infra* Chapters XXV, *Membership*, Sections 309, 310, XXVI, *General and Local Unions*, Section 347.

²Parker v Toronto Musical Protective Ass'n, 32 Ont. (Can.) 305.

when an issue has been sustained by the grand chief and carried into effect by the B. of L. E. it shall be recognized as a violation of obligation for a member of the Brotherhood of Locomotive Engineers' Association who may be employed on a railroad running in connection with or adjacent to said road, to handle the property belonging to said railroad or system in any way that may benefit said company in which the B. of L. E. is at issue until the grievance or issue of whatever nature or kind has been amicably settled is void as being in contravention of the Interstate Commerce law."³ It has likewise been held for obvious reasons that a resolution requiring members to support designated persons for public office is void as against public policy.⁴

§ 287. Operation and effect.—As a contract.

The constitution, rules and by-laws of a union constitute the contract between the members thereof,⁵ and are binding on them and on the union,⁶ provided they are not in contravention of the law and against public policy. One who becomes a member of a union must be considered as having declared his submission to the constitution rules and by-laws.⁷

§ 288. —As conferring property rights.

While a member of a union may have or acquire as against it, rights which are recognized property rights, such as a right to a share of its funds, or to the use or enjoyment of its common property, the rules and regulations as to membership cannot in any sense be properly said to confer a property right, but confer personal rights only and are essentially in their nature, only rules and regulations describing or defining the method of their voluntary associa-

³ Toledo etc. R. Co. v Pennsylvania Co., 54 Fed. 730, 19 L. R. A. 387, 5 Inters. Com. Rep. 522; Waterhouse v Comer, 55 Fed. 149, 19 L. R. A. 403.

⁴ Schneider v Local Union No. 60, 116 La. 270, 40 So. 700, 5 L. R. A. N. S. 891, 114 Am. St. Rep. 549.

⁵ Connell v Stalker, 48 N. Y. Suppl. 77, 21 Misc. 609; Brown v Stoerkel, 74 Mich. 269, 41 N. W. 921, 3 L. R. A. 430; Harrington v Sendall, (1903)

1 Ch. 921, 72 L. J. Ch. 396, 88 L. T. 323. And see 4 Cyc *Associations* 305; Grand Grove v Garibaldi Grove, 130 Cal. 116, 62 Pac. 496, 80 Am. St. Rep. 80; Levy v Magnolia Lodge, 110 Cal. 297, 42 Pac. 887; Hammerstein v Parsons, 38 Mo. App. 332; Weatherby v Montgomery County Medical Society, 76 Ala. 576.

⁶ See 4 Cyc. 305, *Associations*.

⁷ See Harrington v Sendall, (1903) 1 Ch. 921; 72 L. J. Ch. 396, 88 L. T. 323; *Clubs*, 7 Cyc 263, and cases cited.

tion, with its terms and conditions. The rights conferred being personal rights only, and being also purely voluntary, the enforcement of such rules and regulations governing mere membership and such of the relations and privileges of the members as do not involve property rights, must be left entirely to the association itself and the penalties which it may enforce.⁸

§ 289. Relation of constitution to rules and by-laws.

The constitution of a labor union has the same relation to the rules and by-laws of the union, as the organic law of a state has to the statutes enacted by its legislature. In other words the constitution being the organic law of the union, any rules and by-laws in conflict therewith are void and inoperative.⁹

§ 290. Relation of by-laws to resolutions and customs

By-laws stand in the same relation to resolutions, as constitutions do to by-laws. A union cannot override a by-law by a simple resolution in favor of some object which is forbidden by the by-laws. Hence, a resolution providing for the payment of a salary to a physician is inoperative and void where the by-laws provide that the "funds of the society shall be appropriated for no other purpose than that necessarily incurred for the maintenance of wages, burying the dead, and other incidental expenses."¹⁰ So a custom cannot override express provisions of the by-laws. The principle was applied in a case where the treasurer of a union refused to deliver the books and papers of the union to a special committee thereof. It was held that the fact that there was a custom requiring the treasurer to deliver the books and papers to such committee did not warrant his suspension where the by-laws of the union required the treasurer when legally called on to deliver up the books and papers to the trustees for auditing.¹¹

§ 291. Necessity for adoption of rules and by-laws.

To possess validity and binding force, by-laws must be adopted

⁸ O'Brien v Musical Mut. Protective etc. Union, 64 N. J. Eq. 525, 54 Atl. 150.

⁹ Sherry v Operative Plasters' Mutual Union, 139 Pa. St. 470, 20 Atl. 1062. And see Froelich v Musicians' Mutual Benefit Ass'n, 93 Mo. App.

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¹⁰ Flaherty v Portland Longshoremen's Benevolent Union, 99 Me. 253, 59 Atl. 58.

¹¹ Connell v Stalker, 21 Misc. 423, 48 N. Y. Suppl. 77 (affirming 20 Misc. 423, 45 N. Y. Suppl. 1048).

in accordance with the provisions of the constitution.¹² For instance a by-law not adopted at a regular meeting nor proposed in writing one month before adoption as required by the constitution of the union is invalid.¹³

§ 292. Amendment of rules and by-laws.

Persons who join a union thereby consent to amendment or alteration of the rules, provided the requirements of the rules relating to such amendment or alteration are complied with.¹⁴ Especially is this true if at the time one becomes a member, the right of making amendments is expressly reserved to the association, and he cannot complain of an amendment thereafter though it may injuriously affect him.¹⁵ But where the method of amending by-laws is prescribed by the by-laws, any amendment which is not made in conformity thereto is invalid,¹⁶ and does not bind members though they were present at the meeting and failed to object thereto at the time, and if they so elect, they may raise the question of its illegality subsequently.¹⁷ If a rule is amended in accordance with the rules and by-laws of the association, the fact that it was amended during the insanity of a member who was sane when he joined, does not render it inoperative as to him, though he is prejudiced thereby.¹⁸ Where the rules expressly so provide amendment of the rules and by-laws by resolution of a majority of the members is valid, unless the amendment amounts to a change of the fundamental object of the association.¹⁹

§ 293. Evidence of by-laws and rules—Judicial notice.

Courts will not take judicial notice of the rules and by-laws by which the members of a labor union are bound, and without knowl-

¹² *Froelich v Musicians' Mutual Benevolent Ass'n*, 93 Mo. App. 383.

¹³ *Froelich v Musicians' Mutual Benevolent Ass'n*, 93 Mo. App. 383.

¹⁴ *Burke v Amalgamated Society of Dyers*, 75 L. J. K. B. 533, (1906) 2 K. B. 583; *Thelusson v Valentia*, (1906) 1 Ch. 480, (affirmed in (1907) 2 Ch. 1, 76 L. J. Ch. 465).

¹⁵ *Robinson v Templar Lodge*, 117 Cal. 370, 49 Pac. 170, 59 Am. St. Rep. 193.

¹⁶ *Weiss v Musical Mutual Protec-*

tive Union, 189 Pa. St. 446, 42 Atl. 118, 69 Am. St. Rep. 820 (affirming 29 Pitts. Leg. J. N. S. 1).

¹⁷ *Weiss v Musical Mutual Protective Union*, 189 Pa. St. 446, 42 Atl. 118, 69 Am. St. Rep. 820, (affirming 29 Pitts. Leg. J. N. S. 1.)

¹⁸ *Burke v Amalgamated Society of Dyers*, 75 L. J. K. B. 533, (1906), 2 K. B. 583.

¹⁹ *Thelusson v Valentia*, (1906), 1 Ch. 480, (affirmed in (1907) 2 Ch. 1, 76 L. J. Ch. 465).

edge thereof cannot hold on the simple averment, that a contract was made by which one party agrees to do a piece of work for another with union laborers that such contract is void on the ground of public policy.²⁰

²⁰ Birmingham Paint & Roofing Com-pany v Crompton, (Ala.), 39 So. 1020.

CHAPTER XXIV.

CONTINUED—OFFICERS.

§ 294. Right to appoint or elect and authority which may be exercised—In general.

§ 295. Power to make service contracts for members.

§ 296. Power to call strikes.

§ 296a. Power to bring suit to prevent misapplication of funds.

§ 297. Requisites and validity of election.

§ 298. Removal.

§ 299. Vacation of office.

§ 300. Civil and criminal liability for misapplication of funds.

§ 294. Right to appoint or elect and authority which may be exercised—In general.

Members of a union have the right to appoint or elect officers for their organization. This right of choosing leaders is no greater pretention than that which is recognized in every other department of industry.²¹ The laborer is entitled to the highest wages that the strategy of work or cessation from work may bring, and the limitations upon his intelligence and opportunities may be such that he does not choose to stand upon his own perception of strategic or other conditions.²² They may confer on such officers the power of judging and acting for them in designated matters,²³ and of advising them as to the course to be taken by them in any matter of common interest.²⁴ However the relation of the officers to the members is that of trustees and their conduct is to be judged like that of other trustees, by the extent of their lawful authority and the good faith with which they have executed it.²⁵ Their powers, it is apprehended, are such only as are conferred by some rule or by-law of the union, or by direct action taken by the members of

²¹ In *Re Charge to Grand Jury*, 62 Fed. 828. See also *Hitchman Coal Co. v Mitchell*, 172 Fed. 963.

²² In *Re Charge to Grand Jury*, 62 Fed. 828, 832.

²³ In *Re Charge to Grand Jury*, 62 Fed. 828; *Delaware etc. R. Co. v Switchmen's Union of North America*,

158 Fed. 541; *Wabash etc. R. Co. v Hannahan*, 121 Fed. 563.

²⁴ In *Re Charge to Grand Jury*, 62 Fed. 828.

²⁵ *Thomas v Cincinnati etc. R. Co.*, 62 Fed. 803, 817, 4 Inters. Com. Rep. 788; in *re charge to Grand Jury*, 62 Fed. 828.

the union as a body.²⁶ Thus they have no authority to execute a lease, unless authorized so to do by some rule or by-law or by vote of the members of the union, and parties dealing with them must ascertain at their peril what their powers are,²⁷ and a *fortiori* are they not agents of the union, in respect of acts, which by the rules of the union, are expressly excluded from their powers, and the union cannot be made liable in damages for such acts.²⁸ This doctrine was applied in case of a strike brought about by officers of a trade union in breach of existing contracts and contrary to the rules and regulations of the union.²⁹ So they have no power to pass a resolution to expend funds of the union for the defense of one of its officers sued for acts not authorized by the union and repudiated by it.³⁰

§ 295. —Power to make service contracts for members.

In the absence of express authorization by the members of the union, the officers thereof have no power to make a service contract for them with an employer or association of employers,³¹ although such contracts like other unauthorized contracts may be ratified.³² If authorized to make a contract, they must keep strictly within the terms of their instructions in that regard, and if provisions not authorized by such instructions, are embodied in the contract, the members are not bound thereby, unless they ratify it.³³ So if they ratify it after the addition of certain provisions and the other party to the contract refuses to accede to the proposed changes, no contract exists.³⁴ Where a committee of officers of a general union makes a service contract for the members with an association of employers, which contract is not binding because it

²⁶ See *Burt v Lathrop*, 52 Mich. 105, 17 N. W. 715; and cases cited in the two following notes.

²⁷ *United Order of American Bricklayers' etc. v Fitzgerald*, 59 Ill. App. 362.

²⁸ *Denaby & Cadeby Main Collieries v Yorkshire Miners' Ass'n*, 75 L. J. K. B. 961, (1906) A. C. 384, 95 L. T. 561, 22 T. L. R. 543.

²⁹ *Denaby & Cadeby Main Collieries v Yorkshire Miners' Ass'n*, 75 L. J. K. B. 961, (1906), A. C. 384, 95 L. T. 561, 22 T. L. R. 543.

³⁰ *Alfin v Hewett*, 18 T. L. R. 664.

³¹ *Fell v Berry*, 108 N. Y. Suppl. 669; *A. R. Barnes & Co. v Berry*, 157 Fed. 883. And see *Burnetta v Marcelline Coal Co.*, 180 Mo. 241, 79 S. W. 136.

³² *Fell v Berry*, 108 N. Y. Suppl. 669.

³³ *Fell v Berry*, 108 N. Y. Suppl. 669; *A. R. Barnes & Co. v Berry*, 157 Fed. 883.

³⁴ *Fell v Berry*, 108 N. Y. Suppl. 669.

contains provisions which such committee was not authorized to include, officers of such general union, cannot ratify such contract for a local, where they act without authority from it and from the general union.³⁵ Nor will an attempted ratification of such contract by officers of the local bind its members where they were not authorized so to do.³⁶

§ 296. —Power to call strikes.

Officers of a union may, if such authority be imposed on them, order the members on pain of expulsion from their union, peaceably to leave their employment because any of its terms are unsatisfactory.³⁷ In so doing the officers if acting in good faith commit no violation of law and incur no liability,³⁸ but if their supposed authority is used not in the interest of the union but to further personal ambition or malice, their conduct cannot be justified. Doing a thing under cloak of authority is not doing it with authority.³⁹

§ 296a. —Power to bring suit to restrain misapplication of funds.

Trustees of a union may maintain an action to restrain the misapplication of the funds of a branch of the union by trustees of the branch. This, it was held, is not prevented by section 4 of the Trade Union Act of 1871 which provides that nothing contained in the act shall enable any court to entertain any proceedings instituted with the object of directly enforcing or recovering any damages for the breach of any agreement for the application of the funds of a union to provide benefits to members.⁴⁰

§ 297. Requisites and validity of election.

If, as is usually the case, the union is a voluntary association, the election of its officers, like those of other voluntary associations, is

³⁵ *Fell v Berry*, 108 N. Y. Suppl. 669.

³⁶ *Fell v Berry*, 108 N. Y. Suppl. 669.

³⁷ *Thomas v Cincinnati etc. R. Co.*, 62 Fed. 803, 817, 4 Inters. Com. Rep. 788. And see *Supra* Chapter IV, *Strikes*, Section 54, and XI, *Exercise by Union of Disciplinary Measures Against its Members as Affecting*

Rights of Third Persons, Section 148 et. seq.

³⁸ *Thomas v Cincinnati etc. R. Co.*, 62 Fed. 803, 4 Inters. Com. Rep. 788; *In re charge to Grand Jury*, 62 Fed. 828.

³⁹ *In Re Charge to Grand Jury*, 62 Fed. 828.

⁴⁰ *Cope v Crossingham*, 24 T. L. R. 817. And see *Wolfe v Matthews*, 21 Ch. Div. 194, 47 L. T. 158.

ordinarily regulated by its constitution and by-laws,⁴¹ and a substantial compliance therewith is necessary in order to render the election valid.⁴² If the union is without rules on the subject, it seems that the common parliamentary rules in use by deliberative assemblies may be resorted to in determining the regularity of the election.⁴³

§ 298. Removal.

The power to appoint officers necessarily includes the power of removal, which if the union has a constitution and by-laws must be in accordance therewith.⁴⁴ But if a union is without articles, constitution or rules, its officers are removable at pleasure and without notice at any meeting duly held. The holding of an office unprotected by rules is not an individual right, but is subject to change at the pleasure of the association.⁴⁵

§ 299. Vacation of office.

An officer of one union, by taking membership in a similar union, does not vacate his office where the constitution and by-laws of the former union do not forbid officers to accept membership in another union,⁴⁶ and the fact that the constitution of the second union forbids its members to belong to another union does not operate to vacate an office in the first union. This, at most, is ground for expulsion from the second union and does not affect the relation of the officer with the first union.⁴⁷ Accordingly an attempted election to fill his place is of no effect, and an action against him to recover property of the union, by one on whom the attempt to confer the office by such election is made cannot be maintained.⁴⁸

§ 300. Civil and criminal liability for misapplication of funds.

In America, where from an early date labor unions have been held to be lawful and even commendable organizations, no question can arise as to the liability of an officer to a civil action by the

⁴¹ See *Associations*, 4 Cyc p 308, and cases cited.

⁴² *Grand Rapids Guard v Bulkley*, 97 Mich. 610, 57 N. W. 188.

⁴³ *Ostrom v Greene*, 161 N. Y. 353, 55 N. E. 919.

⁴⁴ See *Mutual Benefit Insurance*, 29 Cyc 24.

⁴⁵ *Ostrom v Greene*, 161 N. Y. 353,

55 N. E. 919.

⁴⁶ *Farrell v Dalzell*, 5 N. Y. Suppl. 729; *Farrell v Cook*, 11 N. Y. Suppl. 376, (affirming 5 N. Y. Suppl. 727).

⁴⁷ *Farrell v Dalzell*, 5 N. Y. Suppl. 729; *Farrell v Cook*, 11 N. Y. Suppl. 376, (affirming 5 N. Y. Suppl. 727).

⁴⁸ *Farrell v Cook*, 11 N. Y. Suppl. 376, (affirming 5 N. Y. Suppl. 727).

union for a misapplication of its funds, or to a criminal prosecution for an embezzlement thereof. But in England prior to 1869 in which year the Trades Unions' Fund Protection Act was passed, criminal proceedings could not be taken against officers of a labor union if they fraudulently made away with the funds of the union, because labor unions were unlawful associations as being in restraint of trade. The act mentioned was passed to enable prosecutions to be instituted in these cases. This act, however, was repealed by the Trade Unions Act of 1871,⁴⁹ and a statute substituted which in substance provided that if any officer of a registered trade union, fraudulently misapplies money of the union, the court of summary jurisdiction for the place in which the registered office of the union is situated, may, on complaint by any person on behalf of the union, order the officer to repay the money misapplied, and if the court thinks fit, a further sum not exceeding £20 and costs, and in default of repayment of such money, or payment of such penalty and costs, the court may order him to be imprisoned not exceeding three months.⁵⁰ The Trade Unions Act of 1871, it has been said, was passed primarily with the view of preventing the treasurers and secretaries of these organizations from robbing them. It was discovered that some of these men abusing the confidences reposed in them took advantage of the law which made these societies illegal, by appropriating their funds and property to their own use.⁵¹ In construing the section herein set out it has been held to be limited to cases in which there has been some fraud or dishonesty by such officer,⁵² and that where an officer has been convicted thereunder, and has undergone a term of imprisonment imposed in default of repayment of the money misapplied, the claim of the union is thereby satisfied. It was said that if a prosecutor after having recourse to the criminal procedure was enabled to proceed against a defendant as for a civil debt, it would lead to oppression.⁵³ Section 12, by its terms applies only to registered Trade Unions "but in the case of unregistered unions, which are no

⁴⁹ Pennant's Trade Unions and The Law, pp 104, 105.

⁵⁰ Trades Unions Act 1871, section 12.

⁵¹ Rigby v Connell, 14 Ch. Div. 482, 49 L. J. Ch. 328, 42 L. T. 139.

⁵² Madden v Rhodes, (1906), 1 K. B. 534, 94 L. T. 41, 54 W. R. 373, 70 J. P. 230, 22 T. L. R. 356, 5 L. J. K. B. 329. And see Barrett v Markham, 41 L. J. M. C. 118.

⁵³ Knight v Whitmore, 53 L. T. 233, 33 W. R. 907.

longer illegal, criminal proceedings for misappropriation of the funds would lie under the provisions of the Larceny Act, 1901.”“ Under section 9 of the Trade Unions Act which provides that trustees of a registered trade union may be sued in respect of the personal or real property of the union, a civil proceeding may be taken against them for the recovery of property misapplied by them.”

“Pennant’s Trade Unions and the Law, p 105. B. 534, 94 L. T. 41, 54 W. R. 373, 70 J. P. 230, 22 T. L. R. 356, 5 L. J.

“Madden v Rhodes, (1901) 1 K. K. B. 329.

CHAPTER XXV.

CONTINUED—MEMBERSHIP.

- § 301. Methods of procuring and retaining members.
- § 302. Qualifications for membership and right of union to exclude from membership.
- § 303. Application for and election to membership.
- § 304. Initiation fees and dues.
- § 304a. Resignation.
- § 305. Forfeiture of membership.
- § 306. Power of union to discipline members.
- § 307. Grounds for exercise of disciplinary measures—For expulsion.
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- § 310. Sufficiency of notice and service of notice.
- § 311. Waiver of notice and service of notice.
- § 312. Nature of hearing and decision.
- § 313. Interference by courts with exercise of disciplinary measures—Jurisdiction where property rights are involved — — American rule.
- § 314. English and Canadian rule.
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- § 316. What are property rights.
- § 317. Necessity for exhausting remedies within the union before resorting to courts.
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- § 321. Pleadings in suits for reinstatement.
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- § 324. Damages resulting from wrongful suspension or expulsion—Right to damages.
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determine claims.

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§ 339. Parties.

§ 340. Defenses.

§ 341. In England and Canada.

§ 342. Suits to enjoin payment of benefits.

§ 343. Right to sue to recover or prevent misapplication of funds of union.

§ 344. Assignment of funds by members and suits to compel assignment.

§ 345. Rights of members on dissolution and winding up.

§ 301. Methods of procuring and retaining members.

To procure members for labor unions, it is perfectly competent to use reasoning, argument, peaceable persuasion and even entreaty,⁵⁶ and the right to use these means to induce others to join the union is in no way affected by the fact that those whom it is sought to induce to join the union are employes of a receiver.⁵⁷ Nevertheless, according to the weight of authority, labor unions must depend for their membership upon the free choice of each individual member. No resort can be had to compulsory methods of any kind either to increase, keep up, or retain such membership.⁵⁸ This doctrine has

Cross References:

For complaint by expelled member to compel reinstatement to membership, see *Appendix* form No. 13.

For form of bill to compel restoration to membership, the setting aside of a fine imposed and for damages see *Appendix* form No. 12.

⁵⁶ *Maryland*.—*My Maryland Lodge v Adt.*, 100 Md. 283, 59 Atl. 721, 68 L. R. A. 752.

Michigan.—*Beck v Railway Teamsters' Protective Union*, 118 Mich. 497, 77 N. W. 13, 74 Am. St. Rep. 44, 42 L. R. A. 407.

Ohio.—*Dayton Mfg. Co. v Metal Polishers' Union*, 11 Ohio Dec. 643.

Oregon.—*Longshore Printing & Publishing Co. v Howell*, 26 Ore. 527,

38 Pac. 547, 46 Am. St. Rep. 640, 28 L. R. A. 464.

Pennsylvania.—*Long v Bricklayers' & Masons' International Union*, 17 Pa. Dist. Rep. 984.

United States.—*United States v Weber*, 114 Fed. 950.

⁵⁷ *United States v Weber*, 114 Fed. 950.

⁵⁸ *Longshore Printing & Publishing Co v Howell*, 26 Ore. 527, 38 Pac. 547, 46 Am. St. Rep. 640, 28 L. R. A. 464; *Long v Bricklayers' & Masons' International Union*, 17 Pa. Dist. Rep. 984; *Reinecke Coal Min. Co. v Wood*, 112 Fed. 477; *Old Dominion Steamship Co. v McKenna*, 30 Fed. 48. Compare *Wunsch v Shankland*, 69 N. Y. Suppl. 349, 59 App. Div. 482.

been applied in numerous cases. Thus it is not permissible to use threats of violence or to make assaults on workmen for the purpose of compelling them to join a union.⁵⁰ And a contract between an association of employers and a labor union, the object and effect of which is to compel workmen not in affiliation with the union to join it at the peril of being deprived of their employment and of the means of making a livelihood, is illegal and presents no defense to an action against the union for damages, by one whose discharge it has procured by virtue of the contract.⁵¹ Nor is it permissible for members of a union in pursuance of an agreement to compel workmen to join the union, to threaten the employers of the latter with strikes and boycotts, in case such employers failed to discharge them,⁵² or to procure the employers to discharge them after an unsuccessful attempt by the employers to persuade them to join the union.⁵³ And an attempt to force men into a union by procuring a boycott against their employer on his refusal to discharge all his employees who refused to join the union is unlawful.⁵⁴

§ 302. Qualifications for membership and right of union to exclude from membership.

On the other hand, the right of labor unions to make by-laws and rules for the admission of members is unquestionable; they may require such qualifications for membership as they choose.⁵⁵ It is perfectly competent for them to restrict membership to those who have stood a prescribed test, in order to secure careful as well as skillful associates in their work. This, it has been well said, "is a matter of no small importance, in view of the state of the law, which absolves the master from liability for injuries sustained by a workman through the carelessness of a co-employee."⁵⁶ So they

⁵⁰ *Reinecke Coal Min. Co. v Wood*, 112 Fed. 477.

⁵¹ *Curran v Galen*, 152 N. Y. 33, 46 N. E. 297, 37 L. R. A. 802, 57 Am. St. Rep. 496, (affirming 28 N. Y. Suppl. 1124 mem.).

⁵² *Erdman v Mitchell*, 207 Pa. St. 79, 56 Atl. 327, 99 Am. St. Rep. 783, 63 L. R. A. 534. *Housepainters' Beneficial Ass'n v Feeny*, 13 Pa. Dist. 335, 29 Pa. Co. Ct. 524.

⁵³ *Plant v Woods*, 176 Mass. 492, 57

N. E. 1011, 79 Am. St. Rep. 330, 51 L. R. A. 339.

⁵⁴ *Shine v Fox Bros. Mfg. Co.*, 156 Fed. 357, 86 C. C. A. 311.

⁵⁵ *Pickett v Walsh*, 192 Mass. 572, 78 N. E. 753, 116 Am. St. Rep. 272, 6 L. R. A. N. S. 1067; *Mayer v Journey-men Stone Cutters' Ass'n*, 47 N. J. Eq. 519, 20 Atl. 492.

⁵⁶ *National Protective Ass'n v Cumming*, 170 N. Y. 315, 63 N. E. 309, 58 L. R. A. 135, 88 Am. St. Rep. 648.

may make the restriction on the line of citizenship, nationality, age, creed or profession, as well as numbers. This power is incident to their character as voluntary associations.⁶⁶ And no court can compel the admission of a person to membership, when it has been denied by the union.⁶⁷ No one can force his way into it, any more than a man can force his way into a social club which is unwilling to receive him.⁶⁸ “The very idea of such organizations is association mutually acceptable, or in accordance with regulations agreed upon; a power to require the admission of a person in any way objectionable to the society is repugnant to the scheme of its organization.”⁶⁹ In construing a by-law relating to qualification for membership, it was held in a recent decision that a stockholder of a corporation is not, in contemplation of law, the employer of those who are working for the corporation which is a person distinct from its members, and as such the only employer, and that a journeyman tinner who is a stockholder in a corporation which employs tanners is not a master-tinner within a by-law authorizing admission to the union of master tanners.⁷⁰

§ 303. Application for and election to membership.

The methods of applying for membership and of election to membership, are usually prescribed by the organic law or by the rules and by-laws of the union, and a substantial compliance therewith is requisite.

§ 304. Initiation fees and dues.

The payment of initiation fees and dues, the amount, and time of payment, forfeiture, etc., are ordinarily provided for by the rules and by-laws of the union. Non-interference by members of a union with an applicant for membership, in his occupation or trade, cannot be construed as “protection” extended by the union to him, within the meaning of a proviso in the constitution that if the

⁶⁶ *Mayer v Journeymen Stone Cutters' Ass'n*, 47 N. J. Eq. 519, 20 Atl. 492.

⁶⁷ *Mayer v Journeymen Stone Cutters Ass'n*, 47 N. J. Eq. 519, 20 Atl. 492. And see *McKane v Adams*, 123 N. Y. 609, 25 N. E. 1057, 20 Am. St. Rep. 785; *Associations*, 4 Cyc. p. 301 and cases cited; *Pennant's Trade*

Unions And The Law, p. 34.

⁶⁸ *Pennant's Trade Unions And The Law*, p. 34.

⁶⁹ *Mayer v Journeymen Stone Cutters' Ass'n*, 47 N. J. Eq. 519, 524, 20 Atl. 492.

⁷⁰ *J. F. Parkinson Co. v Building Trades Council*, 154 Cal. 581, 98 Pac. 1027, 21 L. R. A. N. S. 550.

initiation fee of an applicant is paid in instalments while he is "working at the trade and receiving the protection of the brotherhood," such payments shall be forfeited if the applicant has made any false statements, or is unable to qualify as a member.⁷¹ And a statement by an applicant for membership in a union that he was able to command the average wages in his locality does not amount to a representation with respect to an existing state of facts, except that it was equivalent to an assertion that he believed himself able to command the average wages, and in order to forfeit money paid, as an initiation fee in accordance with a constitutional provision therefor on the ground of the falsity of such statement, it must be shown that he did not reasonably believe that he was able to command the average wages.⁷² If the by-laws contain no requirement that dues be paid in advance they may be paid at any time during the month for which they are payable.⁷³ So where there is nothing in the by-laws prohibiting a member several months in arrears for dues from paying, and he pays the officer designated to receive and collect dues, it is a payment to the association and the sufficiency and validity of such payment is not affected by the fact that such officer does not turn it over to the financial secretary until after the member's death.⁷⁴

§ 304a. Resignation.

A member who has paid his dues may resign at any time and the other members have no power to object.⁷⁵ In the absence of some special regulation in the rules and by-laws, nothing more is required of a member wishing to resign than his sending in a notice of withdrawal. No acceptance is necessary to give it effect.⁷⁶ Consequently when his letter of resignation has been received by the secretary of the association he cannot become a member again without re-election.⁷⁷

§ 305. Forfeiture of membership.

A member of a union by joining a similar organization does not

⁷¹ *Levin v Cosgrove*, 75 N. J. L. 252, 2 Misc. 212.
344, 67 Atl. 1070.

⁷² *Levin v Cosgrove*, 75 N. J. L. 73 L. T. 716.
344, 67 Atl. 1070.

⁷³ *Weiss v Tennant*, 21 N. Y. Suppl. 73 L. T. 716.
252, 2 Misc. 212.

⁷⁴ *Weiss v Tennant*, 21 N. Y. Suppl. 73 L. T. 716.

⁷⁵ *Finch v Oakes*, 65 L. J. Ch. 324,

⁷⁶ *Finch v Oakes*, 65 L. J. Ch. 324,

⁷⁷ *Finch v Oakes*, 65 L. J. Ch. 324,

forfeit his membership in the former where its constitution and by-laws contain no provision forbidding a member joining another union.⁷⁸ Nor is such membership forfeited by the fact that the constitution of the second union provides that no member shall belong to another association of a similar character. While this might furnish ground for expulsion from the second union, it cannot affect the member's relation with the first union.⁷⁹

§ 306. Power of union to discipline members.

The power of a union to fine, suspend or expel a member rests not in the general law, but in the agreement of the members expressed in its constitution, rules and by-laws.⁸⁰ And while it is not permissible for unions to enforce the observance of their regulations, rules and by-laws through violence, threats or intimidation,⁸¹ they may peaceably enforce their observance by infliction of the punishment therein provided, and the courts will not interfere.⁸² The power to expel or otherwise punish a member for conduct in violation of its fundamental objects, and which if persisted in would have a tendency to thwart or destroy such objects or bring the union into disrepute is inherent in the union.⁸³ and it is immaterial that no provision by written rule or by-law is made therefor.⁸⁴ But where no power of expulsion is given by the charter, it can only be exercised when the member has been guilty of some infamous offense, or has done some act tending to the destruction of the society.⁸⁵ So the union has no power to punish members for infraction of by-laws, not adopted in compliance with the require-

⁷⁸ *Farrell v Dalzell*, 5 N. Y. Suppl. 729; *Farrell v Cook*, 11 N. Y. Suppl. 326, (affirming 5 N. Y. Suppl. 726).

⁷⁹ *Farrell v Dalzell*, 5 N. Y. Suppl. 729; *Farrell v Cook*, 11 N. Y. Suppl. 326, (affirming 5 N. Y. Suppl. 726).

⁸⁰ See *Grand Grove v Garbaldi Grove*, 130 Cal. 116, 62 Pac. 486, 80 Am. St. Rep. 80.

⁸¹ *Longshore Printing & Publishing Co. v Howell*, 26 Ore. 527, 38 Pac. 547, 47 Am. St. Rep. 640, 28 L. R. A. 464.

⁸² *Jetton-Dehkle Lumber Co. v Mather*, 53 Fla. 969, 43 So. 590.

⁸³ *Otto v Journeymen Tailors' Pro-*

TECTIVE, etc. Union, 75 Cal. 308, 17 Pac. 217, 7 Am. St. Rep. 156; *Beasley v Chicago Journeymen Plumbers' Benevolent Ass'n*, 44 Ill. App. 278; *Brennan v United Hatters of North America*, 73 N. J. L. 729, 65 Atl. 165, 9 L. R. A. N. S. 254. And see *Hitchman Coal Co. v Mitchell*, 172 Fed. 963.

⁸⁴ *Brennan v United Hatters of North America*, 73 N. J. L. 729, 65 Atl. 165, 9 L. R. A. N. S. 254.

⁸⁵ *Weiss v Musical Mutual Protective Union*, 189 Pa. St. 446, 42 Atl. 118, 69 Am. St. Rep. 820, (affirming 29 Pittsb. Leg. J. N. S. 1).

ments of its organic law,⁸⁶ or which are void as against public policy.⁸⁷ And where the rules of the union provide that a member may be expelled or fined for a designated offense, it cannot impose both penalties for the commission of such offense.⁸⁸ Likewise it cannot expel a member for an offense which is punishable by fine only, nor can this rule be evaded by expelling the member nominally for an offense for which expulsion is proper, but in reality for an offense punishable only by fine.⁸⁹

§ 307. Grounds for exercise of disciplinary measures—For expulsion.

Any conduct which clearly violates the fundamental objects of the union, and which, if persisted in would tend to thwart or work destruction to these objects,⁹⁰ or bring the union into disrepute,⁹¹ is sufficient ground for expulsion. Thus to feign a qualification for membership which does not exist, is a fraud upon the association, and to persist in retaining a membership obtained by such a fraud, after disqualification for it has been established, is subversive of the fundamental objects of the association and is an offense warranting expulsion.⁹² To permit an inefficient workman, who, by misrepresentation of his qualifications as a craftsman, secures membership in an organization of skilled workers in a particular trade wherein membership is based upon efficiency, to continue therein is well calculated to work destruction to the objects of the organization.⁹³ So a violation of such of the established rules of the union as have been subscribed or assented to by the members,

⁸⁶ *Froelich v Musicians' Mut. Ben. Ass'n*, 93 Mo. App. 383.

⁸⁷ *Schneider v Local Union No. 60*, 116 La. 270, 40 So. 700, 5 L. R. A. N. S. 891, 114 Am. St. Rep. 549; *People v New York Benevolent Soc. of Operative Masons*, 3 Hun. (N. Y.) 361, 6 T. & C. 85; *Parker v Toronto Musical Protective Ass'n*, 32 Ont. (Can.) 301.

⁸⁸ *People v New York Benevolent Society of Operative Masons*, 3 Hun. (N. Y.) 361, 6 T. & C. 85.

⁸⁹ *Otto v Journeymen Tailors' Protective etc. Union*, 75 Cal. 308, 17 Pac. 217, 7 Am. St. Rep. 156.

⁹⁰ *Otto v Journeymen Tailors' Protective etc. Union*, 75 Cal. 308, 17 Pac. 217, 7 Am. St. Rep. 156; *Beasley v Chicago Journeymen Plumbers' Ass'n*, 44 Ill. App. 278.

⁹¹ *Otto v Journeymen Tailors' Protective etc. Union*, 75 Cal. 308, 17 Pac. 217, 7 Am. St. Rep. 156.

⁹² *Beasley v Chicago Journeymen Plumbers' Ass'n*, 44 Ill. App. 278. And see *Society, etc. v Meyers*, 52 Pa. St. 125, 91 Am. Dec. 125.

⁹³ *Beasley v Chicago Journeymen Plumbers' etc. Ass'n*, 44 Ill. App. 278.

and provide for expulsion for such violation, is usually ground for expulsion.⁹⁴ Applying this principle it has been held that violation of a by-law prohibiting members from working for those who employ non-union men is ground for expulsion, and that a modification of a blanket injunction against striking members of a labor union, that permits the union peaceably to enforce its rules against its members to the extent of expulsion for such offense, is proper.⁹⁵ On the other hand non-payment of a fine which the union had no power to impose, or one larger than was authorized by the by-laws, is not a ground for expulsion,⁹⁶ nor is the violation of a by-law which is void against public policy.⁹⁷ And there can be no legal expulsion for non-payment of assessments, where there is no proof of an assessment and of notice to pay the same.⁹⁸ So it has been held that the mere fact that a member expresses a view that it is the duty of the members under their contract with their employers to perform certain duties which they are unwilling to assume, furnishes no reasonable ground of complaint where no tribunal in or out of the order had held to the contrary. Until such a decision is rendered every member of the union ought to be at liberty to hold, and among his fellows, freely express his own opinion upon the question.⁹⁹ And where the charter contains no power of expulsion, the issuance of a manifesto complaining of the management of a union and inviting participation in a meeting at which were to be discussed matters affecting the interests of the union, if an offense at all, is a minor one for the commission of which a member cannot be expelled. There is nothing in such a manifesto, tending to disrupt and destroy the union.¹ It has likewise been held that

⁹⁴ *Otto v Journeymen Tailors' Protective etc. Union*, 75 Cal. 308, 17 Pac. 217, 7 Am. St. Rep. 156.

⁹⁵ *Jetton-Dehkle Lumber Co. v Mather*, 53 Fla. 969, 43 So. 590, in which it was said "this was a risk voluntarily assumed by the members entering the unions, and if no longer willing to pay the price, if the advantages derived are not equal to the burdens assumed, each member has a perfect right to withdraw from the union, to seek to get back his former employment and to be protected therein by the injunction still in

force."

⁹⁶ *Meurer v Detroit Musicians' Benevolent etc. Ass'n*, 95 Mich. 451, 54 N. W. 954.

⁹⁷ *People v New York Benevolent Society of Operative Masons*, 3 Hun. (N. Y.) 361, 6 T. & C. 35.

⁹⁸ *Tourville v Brotherhood of Locomotive Firemen*, 54 Ill. App. 71.

⁹⁹ *Fritz v Knaub*, 103 N. Y. Suppl. 1003.

¹ *Weiss v Mutual Musical Protective Union*, 189 Pa. St. 446, 42 Atl. 118, 69 Am. St. Rep. 820 (affirming 29 Pittsb. Leg. J. N. S. 1).

the fact that a member of the brotherhood of locomotive engineers, testifies in a suit against a railroad company is no ground for his expulsion. If the Brotherhood of Locomotive Engineers had in their constitution or by-laws provided in so many words that a member who should testify in court in any case where he was called as a witness should be expelled, such provision would be a nullity.²

§ 308. —For fines and suspension.

Acceptance by a member of a bribe from a fellow workman, intended to secure favorable terms of employment, constitutes a gross breach of duty both to the employer and fellow employes, and is sufficient ground for the imposition of a substantial fine.³ So it is ground for the imposition of a fine that the member violated rules of the union against working with non-union men and for employers who did not pay their employes weekly,⁴ but failure to pay a fine imposed for violation of a by-law, which is illegal because in restraint of trade, and against the army regulations, is no ground for suspension.⁵ So also a failure of members of the union to vote for another member recommended by the union for public office furnishes no ground for fining and suspending them. Their obligations to the union and to the public are distinct from each other, and the latter obligation is paramount.⁶ Where the by-laws of a union require its treasurer to deliver up, when legally called upon, books and papers belonging to the union, to the trustees for auditing, his refusal to deliver the books and papers to a special committee which is not shown to have power under the by-laws to audit or investigate, furnishes no ground for his suspension.⁷ It is immaterial that there was a custom of the union to require the treasurer to deliver the books and papers to a special committee, because a custom cannot override the express provisions of the by-laws prescribing when and to whom such property must be surrend-

² *St. Louis etc. R. Co. v Thompson*, (Tex.) 113 S. W. 144.

³ *Brennan v. United Hatters of North America*, 73 N. J. L. 729, 65 Atl. 165, 9 L. R. A. N. S. 254.

⁴ *Burns v Bricklayers' Benevolent & Protective Ass'n*, 14 N. Y. Suppl. 361, 27 Abb. N. Cas. 20 (affirming 10 N. Y. Suppl. 916, 24 Abb. N. Cas. 150).

⁵ *Parker v Toronto Musical Protective Ass'n*, 32 Ont. (Can.) 301.

⁶ *Schneider v Local Union No. 60*, 116 La. 270, 40 So. 700, 5 L. R. A. N. S. 891, 114 Am. St. Rep. 549.

⁷ *Connell v Stalker*, 21 Misc. (N. Y.) 609, 48 N. Y. Suppl. 77, (affirming 20 Misc. 423, 45 N. Y. Suppl. 1048).

ered,⁸ and even if the union were accustomed to require the treasurer to do otherwise than as prescribed by the by-laws, his refusal to comply should not subject him to the same punishment as a violation of the by-laws themselves.⁹

§ 309. Proceedings to discipline members—Necessity for notice and hearing.

Where valuable rights are involved the most elementary principles of justice require the giving of notice of charges and a hearing to a member upon whom the organization desires to impose disciplinary measures. This requirement exists independently of any provisions to that effect in the organic law or rules of the organization,¹⁰ and indeed, any by-law which assumes to dispense with notice and hearing is unreasonable and void.¹¹ The right to notice and hearing, which as was said exists independently of any provisions therefor, is nevertheless frequently provided for in the constitutions and by-laws of labor unions,¹² the purpose being to preserve the rights of the members against arbitrary action to their prejudice on the part of the organization.¹³ So far as the requirements in this respect are not waived, a substantial compliance therewith is necessary. No member can be subjected to disciplinary measures, without giving him all the opportunities for defense, provided by the regulations having relation to proceedings for such purpose.¹⁴ In accordance with these views, it is uniformly held that an expulsion of a member having valuable rights, without

⁸ *Connell v Stalker*, 21 Misc. (N. Y.) 609, 48 N. Y. Suppl. 77, (affirming 20 Misc. 423, 45 N. Y. Suppl. 1048).

⁹ *Connell v Stalker*, 21 Misc. (N. Y.) 609, 48 N. Y. Suppl. 77, (affirming 20 Misc. 423, 45 N. Y. Suppl. 1048).

¹⁰ *Cotton Jammers & Longshoremen's Ass'n v Taylor*, 23 Tex. Civ. App. 367, 56 S. W. 553; *Beaulieu v Cochrane*, 29 Ont. (Can.) 151. And see *Grand Grove v Garibaldi Grove*, 105 Cal. 219, 38 Pac. 947; *Stewart v United Brotherhood of Carpenters*, 91 Minn. 189, 97 N. W. 668; *Lysaght v St. Louis Operative Stonemasons'*

Ass'n, 55 Mo. App. 538; *Campbell v Johnson*, 167 Fed. 102.

¹¹ *Cotton Jammers & Longshoremen's Union v Taylor*, 23 Tex. Civ. App. 367, 56 S. W. 563.

¹² *Brennan v United Hatters of North America*, 73 N. J. L. 729, 65 Atl. 165, 9 L. R. A. N. S. 254.

¹³ *People v Musical Mutual Protective Union*, 118 N. Y. 101, 23 N. E. 129; *People v Musical Mutual Protective Union*, 1 N. Y. St. 770.

¹⁴ *People v Musical Mutual Protective Union*, 118 N. Y. 101, 23 N. E. 129; *People v Musical Mutual Protective Union*, 47 Hun. (N. Y.) 273.

notice,¹⁵ or on insufficient notice,¹⁶ or without notice and hearing,¹⁷ or without a fair and impartial hearing,¹⁸ is void. And where a member is put on trial without submission of written charges and without due notice as required by the by-laws and is sentenced to pay a fine and give up his employment for one year, such course of procedure, unless consented to by the member, furnishes no justification to the subsequent action of the union in procuring his discharge from employment.¹⁹

§ 310. —Sufficiency of notice and service of notice.

The notice required, is notice that the member is to be put upon trial at a specified time upon specified charges.²⁰ It must contain a complete copy of the charges, otherwise it will be insufficient,²¹ and mere service of a notice on a member summoning him to attend a meeting of the tribunal vested with power to expel is not a sufficient compliance with a requirement that a copy of the charges be served upon a member against whom proceedings for expulsion are pending.²² The notice must be given in season to afford the member a reasonable opportunity to make preparation to meet the charges by summoning witnesses in his behalf.²³ Where service of a copy of charges is insufficient, no jurisdiction to proceed with the trial is acquired, if the party against whom the charges are made does not appear at the trial.²⁴

¹⁵ *People v New York Benev. Soc. of Operative Masons*, 3 Hun. (N. Y.) 361, 6 T. & C. 185.

¹⁶ *People v Musical Protective Union*, 118 N. Y. 101, 23 N. E. 124; *People v Musical Protective Union*, 47 Hun. (N. Y.) 273.

¹⁷ *Lysaght v St. Louis Operative Stone Masons Ass'n*, 55 Mo. App. 538; *Cotton Jammers & Longshoremen's Ass'n v Taylor*, 23 Tex. Civ. App. 367, 56 S. W. 563.

¹⁸ *Weiss v Musical Mutual Protective Union*, 189 Pa. St. 446, 42 Atl. 118, 69 Am. St. Rep. 820 (affirming 29 Pittsb. Leg. J. N. S. 1).

¹⁹ *Brennan v United Hatters of*

North America, 73 N. J. L. 729, 65 Atl. 165, 9 L. R. A. N. S. 254.

²⁰ *Brennan v United Hatters of North America*, 73 N. J. L. 729, 65 Atl. 165, 9 L. R. A. N. S. 254.

²¹ *Weiss v Musical Mutual Protective Union*, 189 Pa. St. 446, 42 Atl. 118, 69 Am. St. Rep. 820, [affirming 29 Pittsb. Leg. J. N. S. 1].

²² *People v Musical Mutual Protective Union*, 118 N. Y. 101, 23 N. E. 129; *People v Musical Mutual Protective Union*, 47 Hun. (N. Y.) 273.

²³ *Brennan v United Hatters of North America*, 73 N. J. L. 729, 65 Atl. 165, 9 L. R. A. N. S. 254.

²⁴ *Fritz v Knaub*, 103 N. Y. Suppl. 1003.

§ 311. —Waiver of notice and service of notice.

The right to service of a copy of the charges may be waived by submitting to the jurisdiction of the tribunal having power to hear them. This a party may do when summoned to appear before any tribunal having jurisdiction of the subject matter involved.²⁵ And any objection based on insufficiency of service is effectively waived by appearing and defending on the merits, without making objection on that ground.²⁶ But appearance by a member merely to deny the jurisdiction of the tribunal to hear charges and refusal to answer charges does not waive a requirement that a copy of the charges preferred be served upon him.²⁷ And the mere fact that a member appeals from a decision rendered against him without written charges and notice, does not constitute an assent to the jurisdiction of the tribunal whose proceedings he seeks to review.²⁸ Where the facts are disputed as to whether a member waived the requirement as to notice, the question should be submitted to the jury.²⁹

§ 312. —Nature of hearing and decision.

Domestic tribunals of labor unions provided for dealing with matters relating to the discipline of members, and for securing the good government and welfare of the organization, are not fettered by the rules of evidence as applied in courts of law, but may proceed on the evidence on which men transact the ordinary business of life.³⁰ But nevertheless, they are bound to act according to the principles of justice.³¹ The decisions of such tribunals expelling or suspending members are of a quasi-judicial character.³²

§ 313. Interference by courts with exercise of disciplinary measures—Jurisdiction where property rights are involved — — American rule.

In America, where from an early period labor unions organized for the usual purposes of maintaining or advancing the rate of

²⁵ *People v Musical Protective Union*, 118 N. Y. 101, 53 N. E. 129.

²⁶ *Fritz v Knaub*, 103 N. Y. Suppl. 1003.

²⁷ *People v Musical Protective Union*, 118 N. Y. 101, 23 N. E. 129; *People v Musical Mutual Union*, 47 Hun. (N. Y.) 273.

²⁸ *Brennan v United Hatters of North America*, 73 N. J. L. 729, 65

Atl. 165, 9 L. R. A. N. S. 254.

North America, 73 N. J. L. 729, 65

Atl. 165, 9 L. R. A. N. S. 254.

²⁹ *Brennan v United Hatters of*

³⁰ *Beaulieu v Cochrane*, 29 Ont. (Can.) 151.

³¹ *Beaulieu v Cochrane*, 29 Ont. (Can.) 151.

³² *Otto v Journeymen Tailors' Protective etc. Union*, 75 Cal. 308, 17

wages, procuring shorter hours of labor, etc., have been considered lawful and commendable organizations, courts have jurisdiction to protect a member from unlawful or arbitrary suspension or expulsion,³³ or of proceedings to compel reinstatement to membership with all the rights and privileges thereunto belonging, of a member who has been unlawfully suspended or expelled,³⁴ provided property rights are involved. This doctrine applies with equal force to unincorporated unions,³⁵ and to those which are incorporated,³⁶ but presupposes the lawfulness of the union, for although a member of a union has property rights therein, the courts will not prevent his expulsion by proceedings not authorized by the laws of the union, where the purposes of the union are unlawful as being in restraint of trade. To grant such relief would be to keep him where the law says he has no right to be and to retain him in a position where he may aid in the support and maintenance of an illegal association.³⁷

§ 314. —English and Canadian rule.

In England prior to the act of 1871, a labor union was an unlawful organization and none of the contracts provided for by its rules were enforceable.³⁸ By sections 2 and 3 of that act, it was provided that the purposes of any trade union shall not by reason merely that they are in restraint of trade, be considered unlawful so as to render any member liable to criminal prosecution for conspiracy or otherwise, or so as to render void or voidable any agreement or trust. By section 4, however, it was provided that noth-

Pac. 217, 7 Am. St. Rep. 156; *Froelich v Musicians' Mut. Ben. Ass'n*, 93 Mo. App. 383.

³³ *Froelich v Musicians' Mut. Ben. Ass'n*, 93 Mo. App. 383.

³⁴ *Otto v Journeymen Tailors' Protective etc. Ass'n*, 75 Cal. 308, 17 Pac. 217, 7 Am. St. Rep. 156; *Lysaght v St. Louis Stone Masons' Ass'n*, 55 Mo. App. 538; *Weiss v Musical Mut. Protective Union*, 189 Pa. St. 46, 42 Atl. 118, 69 Am. St. Rep. 820, (affirming 29 Pitts. Leg. J. N. S. 1).

³⁵ *Otto v Journeymen Tailors' Protective etc. Ass'n*, 55 Cal. 308, 17 Pac. 217, 7 Am. St. Rep. 156; *Froelich v Musicians' Mut. Ben. Ass'n*, 93 Mo. App. 383.

lich v Musicians' Mut. Ben. Ass'n, 93 Mo. App. 383.

³⁶ *Lysaght v St. Louis Stone Masons' Ass'n*, 55 Mo. App. 538; *Weiss v Musical Mut. Protective Union*, 189 Pa. St. 46, 42 Atl. 118, 69 Am. St. Rep. 820, (affirming 29 Pitts. Leg. J. N. S. 1).

³⁷ *Froelich v Musicians' Mut. Ben. Ass'n*, 93 Mo. App. 383.

³⁸ *Pennant on Trade Unions And The Law*, p. 16; *Hilton v Eckerslay*, 6 El. & Bl. 47, 25 L. J. Q. B. 199; *Hornby v Close*, L. R. 2 Q. B. 153, 36 L. J. M. C. 43, 15 L. T. 563.

ing in the act shall enable any court to entertain proceedings for the purpose of directly enforcing or recovering damages for the breach of any agreement for the application of the funds of the union to provide benefits to members. Construing these provisions, it was held in a well reasoned opinion by Jessel, M. R., that a member expelled from a union could not maintain an action, setting up a claim to participate in the benefits of the union and asking that the committee and trustees be restrained from excluding him therefrom, and the reason assigned was that such action was squarely within the prohibition of section 4. In this case the court pointed out some of the purposes of the act such as preventing the officers of unions from robbing them, and enabling unions to hold property and sue in respect of it, but said that it was not intended "that the contracts entered into by the members should be made legal contracts *inter se*, so that courts of justice should interfere to enforce them."³⁹ Taking into consideration the unlawfulness of unions in England before the passage of the Act of 1871, and the prohibition contained in section 4 of that act, it is impossible to reach any other result than that attained in this case, and a similar conclusion is reached in a Canadian decision where an action was brought by a member to recover damages for wrongfully expelling him and depriving him of the benefits of the union.⁴⁰ It was also held in another English case decided at a more recent date than the one first cited in this section, and approving the doctrine therein stated, that an action could not be maintained to enjoin a trade association from acting on a resolution expelling one of its members.⁴¹

§ 315. —Jurisdiction where no property rights are involved.

It has been uniformly declared that where no property rights are involved and the union is a voluntary association, the courts have no jurisdiction to prevent an unlawful suspension or expulsion,⁴² or to compel reinstatement to membership of a member who has

³⁹ *Rigby v Connol*, 14 Ch. D. 482, 49 L. J. Ch. 328. See also opinion of Farwell J. in *Conway v Wade*, (1908) 2 K. B. 844, 854, in which it was said: "Under the Trade Union Acts, the members are bound not to have recourse to the courts for the settlement of their disputes *inter se*."

⁴⁰ *Beaulieu v Cochrane*, 29 Ont. (Can.) 151.

⁴¹ *Chamberlain's Wharf v Smith*, (1900) 2 Ch. 605, 69 L. J. Ch. 783, 83 L. T. 238.

⁴² *Froelich v Musicians' Mut. Ben. Ass'n*, 93 Mo. App. 383.

been unlawfully suspended or expelled.⁴³ The foundation of the jurisdiction of the court to prevent a member of a voluntary association from being improperly expelled is the right of property vested in such member of which he is deprived by such unlawful expulsion, and therefore if the association has no property, the court cannot interfere.⁴⁴ It has also been held that in case the union is a corporation, proceedings to compel reinstatement will not lie unless some property right is involved.⁴⁵

§ 316. —What are property rights.

Where an incorporated union has a surplus in its treasury a member thereof has such a property right therein as will entitle him, on unlawful expulsion, to invoke the aid of the courts to compel his

⁴³Rigby v Connell, 14 Ch. Div. 482, 49 L. J. Ch. 328, in which Jessel, M. R. said: "Persons, and many persons, do associate together without any property in common at all. A dozen people may agree to meet and play whist at each others' houses for a certain period, and if eleven of them refuse to associate with the twelfth any longer, I am not aware that there is any jurisdiction in any court of justice in this country to interfere. Or a dozen or a hundred scientific men may agree with each other in the same way to meet alternately at each other's houses, or at any place where there is a possibility of meeting each other; but if the association has no property, and takes no subscriptions from its members, I cannot imagine that any court of justice could interfere with such an association if some of the members declined to associate with some of the others. That is to say, the courts, as such, have never dreamt of enforcing agreements strictly personal in their nature, whether they are agreements of hiring and service, being the common relation of master and servant, or whether they are agreements for the purpose of pleasure, or for the

purpose of scientific pursuits, or for the purpose of charity or philanthropy—in such cases no court can interfere so long as there is no property the right to which is taken away from the person complaining." And see the following analogous cases relating to voluntary associations other than labor unions; *People v Chicago Board of Trade*, 80 Ill. 134, (in which it was said that the general rule is well settled that courts will not interfere to control the enforcement of the by-laws of merely voluntary associations not created for the purpose of transacting business; that such organizations must be left to enforce their rules and regulations by such means as they may adopt for their government); *Robertson v Walker*, 3 Baxt. (Tenn.) 316, in which it was said that a court of equity has no power to compel restoration to membership in a voluntary association of one who has no undivided property rights in the association.

⁴⁴Rigby v Connol, 14 Ch. D. 482, 49 L. J. Ch. 328.

⁴⁵Lysaght v St. Louis Stone Masons' Ass'n, 55 Mo. App. 538.

reinstatement to membership.⁴⁶ So where a union, whether incorporated or not, has a benefit fund to which members may, under proper circumstances become entitled to a certain extent, they have property rights within the rule which authorizes courts to reinstate members unlawfully expelled or suspended when property rights are involved,⁴⁷ or to enjoin the union from expelling a member by proceedings, not authorized by its laws.⁴⁸ This rule has been applied where the laws of the union provide for the payment of benefits to defray the funeral expenses of members and their wives,⁴⁹ and where the union has, as one of its features, a mutual life and accident insurance association or department.⁵⁰

§ 317. —Necessity for exhausting remedies within the union before resorting to the courts.

As in the case of other voluntary associations,⁵¹ the general rule is well settled that a member who has been subjected to disciplinary measures by the union, must exhaust the remedies provided by its laws before applying to the courts for relief.⁵² The general rule has found frequent application where the member seeks relief against fines, suspension or expulsion,⁵³ and it has been held that a member who has been expelled, cannot maintain a bill to enjoin the union from reporting his expulsion to his employer without first exhausting his remedies within the union.⁵⁴ The fact that during the time necessarily occupied in exhausting such remedies, he will be de-

⁴⁶ *Weiss v Musical Mut. Protective Union*, 189 Pa. St. 446, 42 Atl. 118, 69 Am. St. Rep. 820, (affirming 29 Pitts. Leg. J. N. S. 11).

⁴⁷ *Otto v Journeymen Tailors' Protective etc. Ass'n*, 75 Cal. 308, 17 Pac. 217, 7 Am. St. Rep. 156; *Lysaght v St. Louis Operative Stone Masons' Ass'n*, 55 Mo. App. 538.

⁴⁸ *Froelich v Musicians' Mut. Ben. Ass'n*, 93 Mo. App. 383.

⁴⁹ *Lysaght v St. Louis Operative Stone Masons' Ass'n*, 55 Mo. App. 538.

⁵⁰ See *Fritz v Knaub*, 103 N. Y. Suppl. 1003.

⁵¹ See *Associations*, 4 Cyc.

⁵² *Schneider v Local No. 60*, 116 La.

27, 40 So. 700, 114 Am. St. Rep. 549, 5 L. R. A. N. S. 891; *Harris v Detroit Typographical Union No. 18*, 144 Mich. 422, 108 N. W. 362; *Fritz v Knaub*, 103 N. Y. Suppl. 1003; *Burns v Bricklayers' Benev. etc. Protective Union*, 14 N. Y. Suppl. 361, 27 Abb. N. Cas. 20, (affirming 10 N. Y. Suppl. 916); *Screwmen's Benevolent Ass'n v Benson*, 76 Tex. 552, 13 S. W. 379; *St. Louis etc. R. Co. v Thompson*, (Tex.) 113 S. W. 144.

⁵³ See cases cited *supra* in second note in this section.

⁵⁴ *Harris v Detroit Typographical Union, No. 18*, 144 Mich. 422, 108 N. W. 362.

prived of his privileges as a member of the association constitutes no reason for interference by the courts, because in becoming a member of the organization and binding himself to seek redress for an unlawful or unreasonable sentence by appeal he binds himself to submit to the incidents of an appeal actually taken.⁵⁵ There are, however, a number of well-established exceptions to the rule.⁵⁶ It has no application where there is no adequate remedy provided by the by-laws,⁵⁷ by appeal or otherwise,⁵⁸ or where the member is prevented by the action of the union suspending him, from taking an appeal,⁵⁹ or where the provisions for appeal impress conditions which render it burdensome or ineffective, as for instance a requirement of compliance with the findings of the tribunal inflicting the punishment and the payment of all expenses.⁶⁰ So the rule does not apply in the case of one expelled by proceedings not conducted in accordance with the by-laws of the organization, where the only remedy provided relates to cases of expulsion supported by proceedings lawfully conducted and where the appeal is to the discretionary power of the society available for the restoration of the expelled member only on payment by him of an extra fine and passing an examination the same as that for original membership,⁶¹ or where the next session of the tribunal to which the appeal must be taken is held at a great distance, where the delay in being reinstated caused by taking an appeal would work a forfeiture of his insurance, and where the officer who would preside on appeal had affirmed the judgment of expulsion.⁶² Nor does it apply where the expelled member is refused access to the papers and documents

⁵⁵ *Harris v Detroit Typographical Union No. 18*, 144 Mich. 422, 108 N. W. 362.

⁵⁶ *Fritz v Knaub*, 103 N. Y. Suppl. 1003. And see cases cited *infra* in this section.

⁵⁷ *Schneider v Local Union No. 60*, 116 La. 270, 40 So. 700, 114 Am. St. Rep. 549, 5 L. R. A. N. S. 891; *People v Musical Mut. Protective Union*, 118 N. Y. 101, 23 N. E. 129; *People v Musical Mut. Protective Union*, 47 Hun. (N. Y.) 273.

⁵⁸ *Weiss v Musical Mut. Protective Union*, 189 Pa. St. 446, 42 Atl. 118,

69 Am. St. Rep. 820, (affirming 29 Pitts. Leg. J. N. S. 1).

⁵⁹ See *Campell v Johnson*, 167 Fed. 102.

⁶⁰ *Weiss v Musical Mut. Protective Union*, 189 Pa. St. 446, 42 Atl. 118, 69 Am. St. Rep. 820, (affirming 29 Pittsb. Leg. J. N. S. 1).

⁶¹ *People v Musical Mut. Protective Union*, 118 N. Y. 101, 23 N. E. 129; *People v Musical Mut. Protective Union*, 47 Hun. (N. Y.) 273.

⁶² *Fritz v Knaub*, 103 N. Y. Suppl. 1003.

necessary to enable him to perfect his appeal, except on payment of a fine unlawfully imposed, where the officer against whom he is charged to have made slanderous utterances is to preside on the appeal, where the appeal is to be heard in a distant city, and where by reason of the expulsion, the member is deprived of all opportunity to obtain employment and earn a livelihood.⁶³ Whether a member has done all to exhaust the remedies within the organization is a question for the determination of the court.⁶⁴ It has been held that where pending an appeal by a member against whom a fine has been imposed, taken in accordance with the by-laws of the association imposing it, such association consolidates with another, agreeing that its by-laws, so far as in conflict with the by-laws of the new association, shall be adjusted in conformity therewith within a reasonable time, and the appeal is decided before the amendment is made, the member has exhausted his remedies within the organization, because the by-laws under which the appeal was taken govern until amended, and the member is entitled to seek relief in the courts.⁶⁵

§ 318. —Extent and limits of courts' power of review.

As heretofore stated, the decision of the domestic tribunals of a union suspending or expelling a member is of a quasi-judicial character,⁶⁶ and on proceedings for reinstatement, the courts will only interfere to ascertain whether or not the proceedings of the domestic tribunal were pursuant to the rules and laws of the union,⁶⁷ whether or not the proceedings were in good faith,⁶⁸ and whether or not there was anything in the proceedings in violation of the laws of the land.⁶⁹ If it is found that the proceeding was had fairly,

⁶³ *Corregan v Hay*, 94 N. Y. App. Div. 71, 87 N. Y. Suppl. 956.

⁶⁴ See *Schneider v Local Union No. 60*, 116 La. 270, 40 So. 700, 114 Am. St. Rep. 549, 5 L. R. A. N. S. 891.

⁶⁵ *Fuerst v Musical Mut. Protective Union*, 95 N. Y. Suppl. 155.

⁶⁶ See *supra* this chapter, section 312.

⁶⁷ *Otto v Journeymen Tailors' Protective etc. Ass'n*, 75 Cal. 308, 17 Pac. 217, 7 Am. St. Rep. 156. And

see *Baird v Wells*, 44 Ch. Div. 661, 59 L. J. Ch. 673, 63 L. T. 312.

⁶⁸ *Otto v Journeymen Tailors' Protective Ass'n*, 75 Cal. 308, 17 Pac. 217, 7 Am. St. Rep. 156; *Froelich v Musicians' Mut. Ben. Ass'n*, 93 Mo. App. 383. And see *Baird v Wells*, 44 Ch. Div. 661, 59 L. J. Ch. 673, 63 L. T. 312.

⁶⁹ *Otto v Journeymen Tailors' Protective etc. Ass'n*, 75 Cal. 308, 17 Pac. 217, 7 Am. St. Rep. 150; *Froelich v Musicians' Mut. Ben. Ass'n*, 93 Mo. App. 383, 389.

in good faith, and pursuant to its own laws, and that there was nothing in it in violation of any law of the land, then the sentence is conclusive like that of a judicial tribunal.⁷⁰ So in the absence of any by-laws regulating the procedure for the expulsion of members, the courts will not interfere to restore to membership one who has been expelled when the procedure resorted to was reasonable and fair.⁷¹ In considering the objection that the charges were not proved, the court is restricted to determining the question whether or not there was any substantial evidence at the trial, to sustain the charge. The court cannot consider the weight of the evidence, and substitute its judgment thereon for the judgment of the tribunal before which the member was tried.⁷² If, however, the determination of guilt was wholly unsustained by the evidence, it will be considered "as contrary to natural justice" and subject to review and correction.⁷³

§ 319. —Under what circumstances reinstatement will be compelled.

Members of a union are entitled to reinstatement where the members of the tribunal which expelled them acted in bad faith and maliciously,⁷⁴ or where they have been expelled without notice or opportunity to be heard,⁷⁵ or for non-payment of a fine which the union had no power to impose (one larger than was authorized by the by-laws),⁷⁶ or for an offense for which the punishment of expulsion is not applicable under the constitution and by-laws,⁷⁷ or for disobedience of by-laws which are void as being against public policy,⁷⁸ or for failure to pay a fine for violation of a by-law which is invalid as being in restraint of trade and also because contrary

⁷⁰ *Otto v Journeymen Tailors' Protective etc. Ass'n*, 75 Cal. 308, 17 Pac. 217, 7 Am. St. Rep. 156. See also *St. Louis etc. R. Co. v Thompson*, (Tex.) 113 S. W. 144.

⁷¹ *Beesley v Chicago Journeymen Plumbers' Protective etc. Ass'n*, 44 Ill. App. 278.

⁷² *Fritz v Knaub*, 103 N. Y. Suppl. 1003.

⁷³ *Fritz v Knaub*, 103 N. Y. Suppl. 1003.

⁷⁴ *Otto v Journeymen Tailors' Protective etc. Ass'n*, 75 Cal. 308, 17

Pac. 217, 7 Am. St. Rep. 136. And see *Screwmen's Benevolent Ass'n v Benson*, 76 Tex. 552, 13 S. W. 379.

⁷⁵ *Lysaght v St. Louis Operative Stone Masons' Ass'n*, 55 Mo. App. 538.

⁷⁶ *Meurer v Detroit Musicians' Benevolent etc. Ass'n*, 95 Mich. 451, 54 N. W. 954.

⁷⁷ *Screwmen's Benevolent Ass'n v Benson*, 76 Tex. 552, 13 S. W. 379.

⁷⁸ *Schneider v Local Union No. 60*, 116 La. 7, 40 So. 700, 114 Am. St. Rep. 549, 5 L. R. A. N. S. 891.

to the army regulations.⁷⁹ And on proceedings by an expelled member of a union to compel restoration to membership, his right thereto is not affected by the fact that the union has done business under a different name than by which it was incorporated and by which it may still be properly named in process.⁸⁰ Nor can the union contest its corporate existence by setting up that the act incorporating it had been repealed. The state may complain but not the union, which is assuming to exercise corporate functions.⁸¹ One who has been expelled from a union is not entitled to an injunction restoring him to the privileges of full membership, where he had never received anything more than an apprentice card and it is doubtful from the showing made that he had ever been a member in full standing, and a temporary injunction reinstating him to full membership will be vacated.⁸²

§ 320. —In what proceedings reinstatement will be compelled.

Mandamus is the appropriate remedy to compel reinstatement of a member who has been wrongfully suspended or expelled from an incorporated labor union,⁸³ and where the union is an unincorporated association, a suit in equity for an injunction directing reinstatement is the proper remedy.⁸⁴ As regards the character of injunction awarded, it had been held that courts have power to issue

⁷⁹ *Parker v Toronto Musical Protective Ass'n*, 32 Ont. (Can.) 301.

⁸⁰ *Meurer v Detroit Musicians' Benev. etc. Ass'n*, 95 Mich. 451, 54 N. W. 954.

⁸¹ *Meurer v Detroit Musicians' Benev. etc. Ass'n*, 95 Mich. 451, 54 N. W. 954.

⁸² *Potter v Shaffer*, 40 Misc. 46, 81 N. Y. Suppl. 164.

⁸³ *Michigan*.—*Meurer v Detroit Musicians' Benev. etc. Ass'n*, 95 Mich. 451, 54 N. W. 954.

Missouri.—*Lysaght v St. Louis Operative Stone Masons' Ass'n*, 55 Mo. App. 538.

New York.—*Bachman v Harrington*, 184 N. Y. 458, 77 N. E. 657; *People v Musical Mutual Union*, 118 N. Y. 101, 23 N. E. 129; *People v*

Musical Mutual Protective Union, 47 Hun. (N. Y.) 272; *People v New York Benev. Soc. Operative Masons*, 3 Hun. (N. Y.) 361, 6 T. & C. 85.

Pennsylvania.—*Weiss v Musical Mutual Protective Union*, 189 Pa. St. 446, 42 Atl. 118, (affirming 29 Pittsb. Leg. J. N. S. 1); *Black & White Smith's Society v Van Dyke*, 2 Whart. 309, 30 Am. Dec. 263.

Texas.—*Screwmen's Benevolent Ass'n v Benson*, 76 Tex. 552, 13 S. W. 379.

⁸⁴ *Schneider v Local Union No. 60*, 116 La. 7, 40 So. 700, 114 Am. St. Rep. 549, 5 L. R. A. N. S. 891; *Froelich v Musicians Mut. Ben. Ass'n*, 93 Mo. App. 383; *Bachman v Harrington*, 184 N. Y. 458, 77 N. E. 657; *Parker v Toronto Musical Protective Ass'n*, 32 Ont. (Can.) 301.

preliminary mandatory injunctions, enjoining a union from denying to a suspended member any of the benefits of membership in the union, or from preventing or attempting to prevent members from working with plaintiff, or from preventing him from obtaining work.⁸⁵ They cannot, however, grant a preliminary injunction compelling his unqualified reinstatement. Where there is neither allegation nor proof that affirmative action by defendant of a temporary character is necessary to preserve the status of the parties and the act sought to be enforced is not continuous in its character, but solely the one sought to be decreed by final judgment, the issuing of a preliminary injunction is without authority.⁸⁶

§ 321. —Pleadings in suits for reinstatement.⁸⁷

To give a court of equity jurisdiction to interfere in the case of a voluntary association on the expulsion of a member, the invasion of some property right in the member must be alleged, otherwise a demurrer will lie.⁸⁸

§ 322. —Costs in suits for reinstatement.

On a judgment reinstating one to membership in a union from which he has been expelled, he is entitled to costs of the action.⁸⁹

§ 323. Reinstatement to membership on payment of arrears.

Where it is provided by the rules of the union that members suspended for non-payment of dues, can at any time resume membership by payment of arrearages, payment of such arrearages re-invests them with rights in the funds of the association.⁹⁰

§ 324. Damages resulting from wrongful suspension or expulsion—Right to damages.

A member of a union who has been illegally suspended,⁹¹ or ex-

⁸⁵ *Bachman v Harrington*, 184 N. Y. 458, 77 N. E. 657.

⁸⁶ *Bachman v Harrington*, 184 N. Y. 458, 77 N. E. 657.

⁸⁷ For complaint by expelled member to compel reinstatement to membership, see *Appendix* form No. 13.

For form of bill to compel restoration to membership, the setting aside of a fine imposed and for damages see *Appendix* form No. 12.

⁸⁸ *Rigby v Connol*, 14 Ch. D. 482, 49 L. J. Ch. 328, 42 L. T. 139.

⁸⁹ *Schneider v Local Union*, 116 La. 270, 40 So. 700, 114 Am. St. Rep. 549, 5 L. R. A. N. S. 891; *Fritz v Knaub*, 103 N. Y. Suppl. 1003.

⁹⁰ *Brown v Stoerkel*, 74 Mich. 269, 41 N. W. 921, 3 L. R. A. 430.

⁹¹ *Schneider v Local Union* No. 60, 116 La. 270, 40 So. 700, 114 Am. St. Rep. 549, 5 L. R. A. N. S. 891;

pelled,⁹² is entitled to recover such damages as naturally or proximately result therefrom. This principle has found frequent application in cases where loss of employment resulted from suspension or expulsion.⁹³ And the fact that the by-laws of a union make provision for the suspension of members for designated offenses, and for the taking of appeals from sentences imposing punishment does not affect the question of liability of members of the union, to an action for damages for the formation and execution of a conspiracy to suspend a member unlawfully and procure his discharge from employment.⁹⁴ In an action for damages by one wrongfully suspended by a union, and deprived of employment, a verbal stipulation to withdraw the suit if reinstated to membership presents no defense, where a rule of court requires stipulations for a discontinuance of actions to be in writing. Such a stipulation cannot be enforced by way of estoppel, as where the defendant relies on something to his disadvantage. The suspension being unlawful, it was the duty of defendant to reinstate him, and its doing so resulted in no disadvantage to it.⁹⁵ So to authorize a recovery it is not necessary that the person thus deprived of employment should seek employment outside of the city in which he resided.⁹⁶ This does not mean, however, that he is under no obligation to seek employment in the vicinity where he lives. On the contrary, it is his duty to use reasonable diligence to obtain employment of substantially the same character or grade as that in which he had been employed, and it may be shown in mitigation of damages that he might have received compensation in other similar employment by using proper efforts.⁹⁷ But evidence of this character will not en-

Connell v Stalker, 21 Misc. 609, 48 N. Y. Suppl. 77 (affirming 20 Misc. 423, 45 N. Y. Suppl. 1048); Campbell v Johnson, 167 Fed. 102.

⁹² People v Musical Mutual Protective Union, 118 N. Y. 101, 23 N. E. 129; Meersheim v Musical Mutual Protective Union, 8 N. Y. Suppl. 702, (affirmed in 55 Hun. 608); Cotton Jammers, etc., Ass'n v Taylor, 23 Tex. Civ. App. 367, 56 S. W. 553; Parker v Toronto Musical Protective Ass'n, 32 Ont. (Can.) 305.

⁹³ See cases cited in the two preceding notes.

⁹⁴ Campbell v Johnson, 167 Fed. 102.

⁹⁵ Connell v Stalker, 21 Misc. 609, 48 N. Y. Suppl. 77.

⁹⁶ Connell v Stalker, 21 Misc. 609, 48 N. Y. Supl. 77, (affirming 20 Misc. 423, 45 N. Y. Suppl. 1048). And see as sustaining this proposition *Master and Servant*, 26 Cyc. p. 1015, note 9 and cases cited.

⁹⁷ See *Master and Servant*, 26 Cyc. pp. 1013, 1014, and cases cited.

tirely defeat a recovery.⁸⁸ Ordinarily the measure of damages for loss of employment is the value to the member of the time lost.⁸⁹ On a proper showing other damages in addition to those resulting from loss of employment may be awarded; as for instance, damages resulting from mental suffering and injury to reputation and punitive damages.¹

§ 325. —Necessity for exhausting remedies within union before resorting to courts.

One who is wrongfully expelled from a union need not exhaust his remedies within the union before bringing suit for damages against those whose wrongful acts caused the expulsion.² The reasons applicable to suits to compel restoration to membership of one wrongfully suspended or expelled,³ do not apply, it is said to suits by a member wrongfully expelled to recover damages resulting from such expulsion. The right to apply to the courts for redress of this character, cannot be abridged by any association except by the consent of the member.⁴

§ 326. —In what actions or proceedings recoverable.

Such damages may be recovered in an action brought for that purpose,⁵ and in suits for injunction to compel reinstatement and for incidental relief, where an injunction directing reinstatement is awarded.⁶ And under a statute providing that where return has been made to an alternative writ, issued upon the relation of a private person, the court upon making a final order for peremptory mandamus, must if the relator so elects, award to him the same damages which the relator might recover in an action against the defendant for a false return, damages resulting to a

⁸⁸ See *Master and Servant*, 20 Am. & Eng. Ency. Law (2d ed.) p. 38, note 1, and cases cited.

⁸⁹ *Connell v Stalker*, 20 Misc. 423, 45 N. Y. Suppl. 1048.

¹ *Schneider v Local Union No. 60*, 116 La. 270, 40 So. 700, 114 Am. St. Rep. 549, 5 L. R. A. N. S. 891.

² *St. Louis etc. R. Co. v Thompson*, (Tex.) 113 S. W. 144.

³ See *supra* this chapter, section 319.

⁴ *St. Louis etc. R. Co. v Thompson*,

(Tex.) 113 S. W. 144.

⁵ *Connell v Stalker*, 21 Misc. 609, 48 N. Y. Suppl. 77, (affirming 20 Misc. 423, 45 N. Y. Suppl. 1048); *Meersheim v Musical Mutual Protective Union*, 8 N. Y. Suppl. 702; *Cotton Jammers etc. Ass'n v Taylor*, 23 Tex. Civ. App. 367, 56 S. W. 553.

⁶ *Schneider v Local Union No. 60*, 116 La. 270, 40 So. 700, 114 Am. St. Rep. 549, 5 L. R. A. N. S. 891; *Parker v Toronto Musical Protective Ass'n*, 32 Ont. (Can.) 305.

member from wrongful expulsion may be awarded on his reinstatement in proceedings by mandamus where return has been made to an alternative writ.⁷ Where, however a member of a union, brought an action alleging his unlawful expulsion, the deprivation of his membership rights, and inability to obtain work at his trade by reason thereof, and asking reinstatement to membership and such other relief as to the court may seem just, and obtains judgment for reinstatement with all "the rights, privileges and benefits he had in the union at the time of his expulsion" and costs, he cannot thereafter bring another action to recover damages sustained by the unlawful expulsion, and his inability to obtain work pending his expulsion and reinstatement. "The policy of the law is to avoid a multiplicity of suits, and a person having a cause of action against another is called upon to assert every right which necessarily inheres in or grows out of that action, and in default of which he is thereafter prevented from asserting it."⁸

§ 327. —Pleadings.

In an action for damages for wrongful expulsion, alleged to have resulted in plaintiff being deprived of the use of his tools, the right to engage in remunerative labor and the prevention of his procuring work, the petition should show how this resulted from the expulsion. It should be shown what connection existed between his membership in the association and his means of obtaining work, or in what way he was deprived of an opportunity to secure employment.⁹

§ 328. —Evidence — — Admissibility.

In an action brought by a member to recover damages resulting from wrongful expulsion, a judgment in proceedings for mandamus restoring him to membership is conclusive of the illegality of the expulsion and is competent evidence in his behalf.¹⁰ And because of the conclusiveness of such judgment the defendant in such action cannot give evidence of the proceedings in the domestic

⁷ *People v Musical Mutual Protective Union*, 118 N. Y. 101, 23 N. E. 129.

⁸ *Schmidt v. Weyell*, 113 N. Y. Suppl. 630, 60 Misc. 370.

⁹ *Cotton Jammers etc. Ass'n v Taylor*, 23 Tex. Civ. App. 367, 56 S. W. 553.

¹⁰ *Meerscheim v Musical Mutual Protective Union*, 8 N. Y. Suppl. 702, (affirmed in 55 Hun. 608).

tribunal resulting in expulsion.¹¹ To show that loss of employment was the result of expulsion plaintiff may prove that a blacklist was kept in defendant's office. It is pertinent evidence as consisting of a fact tending to make effectual the prohibition of the by-laws, that no member of the association should permit himself to be employed with plaintiff after he had been expelled from membership, and the necessary effect of that would be to diminish plaintiff's means of employment.¹² So evidence as to a statement accompanying plaintiff's discharge from employment that he was not wanted, but that men belonging to the union were wanted is admissible.¹³ On the question of the amount of damages resulting from the expulsion, evidence of plaintiff's employment and earnings while a member of the association in good standing and the diminished amount of that employment and earnings after his expulsion and his posting as an expelled member, is competent¹⁴ and where there is evidence which raised the issue of exemplary as well as actual damages, plaintiff may testify that at the time of his expulsion, he had a home of his own, and a wife and children; this evidence is competent to determine what effect upon his mind and upon his reputation, such a proceeding might have.¹⁵ Unless evidence as to the adoption of by-laws is at least sufficient to raise an issue as to whether they were adopted, the by-laws should not be admitted in evidence.¹⁶

¹¹ *Meerscheim v Musical Mutual Protective Union*, 8 N. Y. Suppl. 702, (affirmed in 55 Hun. 608).

¹² *Meerscheim v Musical Mutual Protective Union*, 8 N. Y. Suppl. 702, (affirmed in 55 Hun. 608).

¹³ *Meerscheim v Musical Mutual Protective Union*, 8 N. Y. Suppl. 702, (affirmed in 55 Hun. 608).

¹⁴ *Meerscheim v Musical Mutual Protective Union*, 8 N. Y. Suppl. 702, (affirmed in 55 Hun. 608) in which it was said: "If this proof could not be given, then, whatever might in fact have been the extent of the injury and loss suffered by the plaintiff, the law would afford no means

for recovering it in the action. It would sacrifice his right to indemnity to his inability to prove his case, and that the law is not chargeable with having done. But on the contrary, where a wrong has been perpetrated, it permits the best evidence to be given to establish the right of action that the nature of the case will permit; and that was the best and the only proof which could be made by the plaintiff to sustain his action."

¹⁵ *St. Louis etc. R. Co. v Thompson*, (Tex.) 113 S. W. 144.

¹⁶ *Cotton Jammers etc. Union v Taylor*, 23 Tex. Civ. App. 367, 56 S. W. 563.

§ 329. — — Sufficiency.

In an action by a member of a union against other members for the execution of a conspiracy to wrongfully suspend him from the union and procure his discharge from employment, it was shown that plaintiff had twice before been fined for alleged breaches of the rules, and that on each occasion he had appealed to the International Union and that his appeal had been sustained. At meetings subsequent thereto some of the members stated that they were "after plaintiff's scalp" and would "get him yet." There was also evidence that his refusal to testify before a committee for which he was charged with contempt, was not contempt, and that according to the rules of the union he could not be required to testify against himself. And it was not denied that he was furnished no copy of the charges on which he was finally suspended and that he had no notice to appear and was not present at the meeting at which he was suspended. There was also evidence that the officers of the union refused to allow him to appeal and refused to show him the record on which he was suspended, and that he was compelled to take his appeal by telegraphing his own affidavit to the president of the International Union. And it appeared that he was suspended from his position on account of his troubles with the union. It was held that the evidence sustained a verdict and judgment for plaintiff.¹⁷

§ 330. —Questions for jury and instructions.

In an action for damages resulting from alleged wrongful expulsion, whether or not a letter written by plaintiff and the circumstances attending it can reasonably be considered a violation of his obligations to the union, is a question for the court.¹⁸ But whether the members of a domestic tribunal acted in good faith in holding certain conduct of plaintiff in violation of his obligations to the union is a question of fact for the jury.¹⁹ And if an issue as to the adoption of by-laws is raised, the question of their adoption should be submitted to the jury.²⁰ In an action by a member of a union against other members for the execution of a conspiracy to

¹⁷ *Campbell v Johnson*, 167 Fed. 102.

¹⁸ *St. Louis etc. R. Co. v Thompson*, (Tex.) 113 S. W. 144.

¹⁹ *St. Louis etc. R. Co. v Thompson*, (Tex.) 113 S. W. 144.

²⁰ *Cotton Jammers etc. Union v Taylor*, 23 Tex. Civ. App. 367, 56 S. W. 563.

unlawfully suspend him and procure his discharge from employment the court instructed the jury that "It is not required for the plaintiff to prove in this case a criminal conspiracy. The only kind of conspiracy that had to be proved is that there was a common purpose and a concert of action with the plain intent in the minds of the different persons to cause the suspension of the plaintiff from membership in the union. If that purpose existed and was successful in causing his suspension, and the members who were participants in that, knew that the necessary consequence of the suspension would be the loss of his position, then the jury have a right to find from these conditions that their purpose was to injure him." It was held that this instruction is not erroneous as taking away from the jury the consideration of all question of malice or ill-will, when read in connection with the further instruction that "the decision of the case turns upon the question of whether the defendants did anything from malice and ill-will, and by a concert of action with a common purpose to do an injury, or whether they as members of an association, acting in good faith and without malice and without ill-will, acted in accordance with their best judgment to promote the interests of the association." ²¹

§ 331. — Verdict.

In an action for damages resulting from the execution of a conspiracy between a railroad company and members of a union to wrongfully procure plaintiff's expulsion from the union, a verdict against the railroad company and acquitting all the other defendants cannot stand because a conspiracy cannot be formed by one person. ²²

§ 332. — Measure of damages.

One who has been wrongfully expelled from a union through the efforts of conspirators working to that end is entitled to recover from them all damages which naturally flow from such expulsion. ²³ He is entitled to recover such sum as would compensate him for the pecuniary losses sustained by him as a result of the unlawful expulsion and also such sums as would compensate him for the mental suffering and humiliation that was caused by reason of the

²¹ Campbell v Johnson, 167 Fed. (Tex.) 113 S. W. 144.
102.

²² St. Louis etc. R. Co. v Thompson, (Tex.) 113 S. W. 144.

expulsion and by reason of the publication of the same in the journal of the order.²⁴ If the defendants or either of them were actuated by malice, plaintiff may in the discretion of the jury recover exemplary damages against either or all of the defendants in such sum as the jury may believe should be assessed against defendants or either of them. It is not necessary, as in the case of actual damages recovered, that all of the defendants should be subjected to the same verdict because some of the defendants have acted without malice, but in combination with others, and as to such defendants there should be no right to recover exemplary damages.²⁵

§ 333. — To what extent findings of domestic tribunals of a union binding on court.

Where the domestic tribunal of a union in good faith, fairly and honestly passed upon the testimony submitted to them, and find a member guilty of violating his obligation, or the constitution and by-laws of the order, their action is final and conclusive of the matter and the member, if expelled, cannot recover because of his expulsion from the order nor for any of the consequences flowing from it.²⁶ If however the members of the tribunal did not act in good faith and did not exercise their honest judgment, in holding certain conduct of the member a violation of his obligation or of the constitution and by-laws of the union, but used it as a pretext by which to expel him on another charge, then their action would be void and the member would be entitled to recover damages.²⁷

§ 334. Actions by members based on imposition of fines.

In America, where a member has been illegally fined and suspended, he is entitled on a judgment reinstating him to membership to a remission of the fine if he has asked that relief in his complaint.²⁸ And where a fine has been illegally imposed on a member and collected by duress, and the remedies within the organization have been exhausted, an action may be maintained by him to recover it back.²⁹ In this connection it may be stated that a

²⁴ St. Louis etc. R. Co. v Thompson, (Tex.) 113 S. W. 144.

(Tex.) 113 S. W. 144. And see supra this chapter, section 319.

²⁵ St. Louis etc. R. Co. v Thompson, (Tex.) 113 S. W. 144.

²⁶ Schneider v Local Union No. 60, 116 La. 270, 40 So. 700, 114 Am. St. Rep. 549, 5 L. R. A. N. S. 891.

²⁶ St. Louis etc. R. Co. v Thompson, (Tex.) 113 S. W. 144.

²⁹ Fuerst v Musical Mutual Protective Union, 95 N. Y. Suppl. 155.

²⁷ St. Louis etc. R. Co. v Thompson,

threat by the president that if the fine was not paid the member would be expelled, in which case his means of earning a livelihood in his profession would be impaired if not totally destroyed, amounts to duress.³⁰ In England, however, where a statute³¹ provides that nothing therein contained shall enable any court to entertain any legal proceeding instituted with the object of directly enforcing or recovering damages for the breach of any agreement for the application of the funds of a trade union to provide benefits to members, it has been held that where the executive committee of a registered trade union have passed a resolution inflicting fines upon members who have acted in a manner prejudicial to the welfare of the society, the society will not be restrained at the instance of the members on whom such fines have been stated to have been imposed from levying them, even on the assumption that the rules gave no direct power of fining. The view was taken that to prohibit the defendants from levying such fines at the instance of parties who still wish to retain the benefit of membership of the society with its attendant advantages, would be entertaining legal proceedings instituted with a view to directly enforcing an agreement within the statute cited.³²

§ 335. Benefits — Right to.

Many of the unions make provisions for payment of certain classes of benefits, such as accident benefits, death benefits, insurance, strike pay, sick pay, superannuation, etc., and to this extent at least, are in the nature of mutual benefit associations. Each member has an interest in any fund accumulated for these purposes in the hands of the union,³³ but can avail himself of the provisions for payment of benefits therefrom, only as provided by the constitution, rules or by-laws of the association.³⁴ In other words his right to benefits is a defeasible one. He cannot take benefits and

³⁰ *Fuerst v Musical Mutual Protective Union*, 95 N. Y. Suppl. 155.

³¹ *Trades Union Act 1871*, section 4.

³² *Mullett v United French Polishers' Soc.*, 91 L. T. 133, 20 T. L. Rep. 595.

³³ *Flaherty v Portland Longshoremen's Benevolent Society*, 99 Me. 253, 59 Atl. 58; *Meurer v Detroit*

Musicians Benev. etc. Ass'n, (1903) 95 Mich. 451, 54 N. W. 954.

³⁴ *Harrington v Workingmen's Ben. Ass'n*, 70 Ga. 340; *Wexner v Grunapple*, 111 N. Y. Suppl. 280, 127 App. Div. 579; *Coons v Christie*, 53 N. Y. Suppl. 668, 24 Misc. 296. And see cases cited in subsequent notes in this section.

at the same time ignore the rules of the union.³⁵ Thus if the by-laws provide that members shall not work for unaffiliated employers, it seems that an observance of such by-laws by a member is a condition to the right to receive benefits.³⁶ If the by-laws provide for payment of benefits to members of committees sent to confer with employers who are discharged in consequence thereof, until they shall again obtain steady employment, the right of such members to benefits ceases on their acceptance of steady employment of any character. To terminate their right to benefits, it is not necessary that they should obtain steady employment in the trade ordinarily pursued by them as a means of livelihood.³⁷ If the constitution provides that in order to share in accident benefits a member must have worked at the job where the injury was received at the rate of wages demanded by the organization, a member who is injured while working for a less rate of wages than demanded by the organization cannot recover accident benefits.³⁸ So where the rules of a union allow strike pay to members who cease work in accordance with such rules, and members cease work without permission of the union, it has no power to give its permission subsequently so as to authorize strike pay being given to such members.³⁹ In a similar case recently decided it appeared that the rules of a union, the management of which was vested in a council, under whom an executive committee acted, provided that no lodge was to give notice of a strike until its case had been laid before a council or committee meeting for their approval; and that any lodge, or number of men in a lodge, ceasing work without the approval of either the committee or council, should forfeit all claims on the union. A number of men in a lodge ceased work on account of a dispute with their employer without having laid their case before the council or committee for their approval. The executive committee refused to allow strike pay, but the council on appeal allowed it. The court held that the action of the council

³⁵ *Burke v Amalgamated Society of Dyers*, 75 L. J. K. B. (1906) 2 K. B. 583.

³⁶ *Coons v Christie*, 53 N. Y. Suppl. 668, 24 Misc. 296.

³⁷ *Donovan v Friendly Society of*

Engravers, (R. I. 1908), 69 Atl. 554.

³⁸ *Conniff v Jamour*, 31 Misc. 729, 65 N. Y. Suppl. 817.

³⁹ *Howden v Yorkshire Miners' Ass'n*, (1893) 1 K. B. 308, 72 L. J. K. B. 176, 88 L. T. 134.

was *ultra vires*.⁴⁰ If it is a prerequisite to receiving a benefit for sickness that the member claiming it shall furnish a doctor's certificate to the sick committee, the mere exhibition of such certificate to a member of that committee is insufficient.⁴¹ And where a rule provides that members of a branch of the union which might be "locked out or otherwise thrown out of employment" should on certain conditions, receive strike pay, and the members of a branch of the union struck illegally and without the sanction of the union, and afterwards expressed a desire to resume work, their object in resuming work being only to put themselves in a position to strike with the sanction of the union, and the masters refused to allow them to go back to work, it was held that they were not "locked out or otherwise thrown out of employment" within the meaning of the rule.⁴² Nevertheless, provisions of a constitution which may deprive a member of rights acquired when paying dues from time to time are to be construed strictly, the reason for this being that forfeitures are not favored in the law. A member should not be deprived of benefits arising out of his certificate of membership unless a construction of the constitution makes such a result absolutely necessary.⁴³ In accordance with this principle it has been held that a provision that "no person who engages in the sale of intoxicating drinks can be admitted or retained as a member," when taken in connection with other provisions seemingly applicable, respecting the preferring of charges and the methods prescribed for trials of offending members, cannot be deemed self-executing, and a member's rights under his certificate do not terminate *ipso facto* on his engaging in the sale of intoxicating liquors. Charges must be preferred and an opportunity to defend given him before his membership ceases.⁴⁴ It has similarly been held that where there is nothing in the by-laws requiring dues to be paid in advance, a member's monthly dues may be paid at any time during the month,

⁴⁰ *In re Durham Miners' Ass'n*, 17 T. L. Rep. 39.

⁴¹ *Harrington v Workingmen's Benev. Ass'n*, 70 Ga. 340. And see *Wexner v Gruneapple*, 111 N. Y. Suppl. 280, 127 App. Div. 579.

⁴² *Howden v Yorkshire Miners' Ass'n*, (1893) 1 K. B. 308, 72 L. J. K. B. 176, 88 L. T. 134.

⁴³ *Stewart v United Brotherhood of Carpenters, etc.*, 91 Minn. 189, 97 N. W. 668; *Screwmen's Benev. Ass'n v O'Donohue*, 25 Tex. Civ. App. 254, 60 S. W. 683.

⁴⁴ *Steinart v United Brotherhood of Carpenters, etc.*, 91 Minn. 189, 97 N. W. 668.

and that one who dies before the end of the month cannot be considered as in arrears for that month, so as to bar his wife's right to the amount provided by the by-laws for defraying the funeral expenses of deceased members clear of all fines and in good standing.⁴⁵ A provision in the constitution that rights to benefits may be forfeited by a member who voluntarily exposes himself to risks to which members are not usually liable, has no application to a member who so exposes himself, where the organization through its duly authorized officers accepts assessments from such member with full knowledge of the unusual hazards of his occupation. Under these circumstances the constitutional provision is waived.⁴⁶ And where circumstances occur under which a member becomes entitled to a benefit, he cannot be deprived of his right thereto by a subsequent amendment of the constitution.⁴⁷

§ 336. — **Actions to enforce payment of benefits — — In the United States — — — Where provision is made for domestic tribunal to determine claims.**

As was shown in a preceding chapter, there is a conflict of authority as to whether any power resides in a union to make a determination of its own tribunal in respect of a claim by a member for benefits a conclusive adjudication of the question precluding recourse to the courts, the better opinion, both on principle and the weight of authority being that it has no such power. It was also shown that in some jurisdictions where the power was declared to exist, the view was taken that it must be conferred expressly by some provision in the constitution, rules or by-laws, while in others it was held that such power existed under provisions simply conferring on designated tribunals the jurisdiction to hear and determine claims of members against the union for benefits.⁴⁸ Where the view prevails that these associations have no power to adopt provisions making final the decisions of their own tribunals in relation to claims for benefits, it is of course competent to bring suit for benefits notwithstanding an adverse decision of the domestic

⁴⁵ *Weiss v Tennant*, 2 Misc. 213, 21 N. Y. Suppl. 252.

⁴⁶ *Brotherhood of Painters, etc. v Moore*, 36 Ind. App. 580, 76 N. E. 262.

⁴⁷ *Brotherhood of Painters, etc. v Moore*, 36 Ind. App. 580, 76 N. E. 262.

⁴⁸ See *Supra* Chapter XXIII, *Constitutions, Rules and By-laws*, Section 284.

tribunal on a claim therefor, and the existence of provisions declaring that such decisions shall be final.⁴⁹ On the other hand, in jurisdictions where the view is taken that the determination of the domestic tribunal is final on claims of members for benefits against the union, if the constitution or by-laws so provide, but not otherwise, a member whose claim for benefits has been decided adversely to him may resort to the courts for its enforcement if there is no express provision making the determination of the domestic tribunal final, but if such provision exists, he cannot successfully resort to the courts, in the absence of any showing of fraud on the part of the tribunal which passed on the claim.⁵⁰ So in jurisdictions where the view is taken that if the domestic tribunal is vested with power to hear and determine claims of members for benefits, its determination is final whether or not there is any express provision to that effect, a member cannot in the absence of fraud invoke the aid of the courts against an adverse decision on a claim for benefits by a domestic tribunal vested with power to hear and determine the claim, and it makes no difference whether or not provisions exist declaring that such decision shall be final.⁵¹ If a claim has been duly allowed, and the officer to whom is delegated that duty refuses payment, the member may, of course resort to the courts to compel payment.⁵²

§ 337. — — — Where no provision is made for domestic tribunal to determine claims.

If no provision is made by the by-laws for a tribunal to decide

⁴⁹ See *Supreme Council Chosen Friends v Forsinger*, 125 Ind. 52, 25 N. E. 129, 21 Am. St. Rep. 196, 9 L. R. A. 501; *Bauer v Sampson Lodge*, 102 Ind. 262, 1 N. E. 571; *Myers v Jenkins*, 63 Ohio St. 101, 57 N. E. 1089; *Zeliff v Grand Lodge*, 53 N. J. L. 536, 22 Atl. 63; *Grimbley v Harold*, 125 Cal. 24, 51 Pac. 558, 73 Am. St. Rep. 19; *Daniher v Grand Lodge A. O. U. W.*, 10 Utah 110, 37 Pac. 245; *Edwards v Aberagon Mut. Ship Ins. Society L. R.*, 1 Q. B. 563.

⁵⁰ *Van Pouck v The Netherland St. Vincent De Paul Society*, 63 Mich. 378, 29 N. W. 863. And see *Wuerthner v Workingmen's Benevolent Ass'n*, 121 Mich. 90, 70 S. W. 921; *Railway Passenger & Freight Conductors' Mutual Aid and Benefit Ass'n*, 147 Ill. 138, 35 N. E. 168.

⁵¹ See *Donnelly v Supreme Council C. B. L.*, 106 Md. 425, 67 Atl. 276, 124 Am. St. Rep. 499; *Anacosta Tribe v Murbach*, 13 Md. 91, 71 Am. Dec. 625.

⁵² See *Anacosta Tribe v Murbach*, 13 Md. 91, 71 Am. Dec. 625.

claims against it by members, a member may resort to the courts for enforcement of a claim.⁵³

§ 338. — — — Necessity for exhausting remedies within union before resorting to courts.

As was shown in a previous chapter, it is competent to provide by the by-laws for the presentation of claims for benefits to designated officers, and that the members presenting the claim, shall if dissatisfied with their action, appeal to the governing board of the organization.⁵⁴ Those who become members of these organizations subscribe to their laws, and if they make provisions for trying controversies relating to property rights, the member aggrieved must pursue the course prescribed before resorting to the courts to enforce his claim. There is no valid reason why he should not be compelled to do what he has agreed, and the harmony and efficiency of such organizations require that all measures provided and required by their by-laws should be exhausted before appealing to the courts to settle the controversy.⁵⁵ It has been held however that by-laws simply giving the right of appeal to a superior body of which the association is a branch will not deprive a member of the right to sue before taking such appeal.⁵⁶

§ 339. — — — Parties.

In accordance with well settled principles relating to parties,⁵⁷ if the union is an unincorporated association, and there is no statute authorizing it, no action for benefits can be brought against such union as a body.⁵⁸ And if statutes authorize suit to be brought

⁵³ *Dolan v Court of Good Samaritan*, 128 Mass. 437.

⁵⁴ See *Supra* Chapter XXIII, *Constitutions, Rules and By-Laws*, Section 283.

⁵⁵ *Bauer v Sampson Lodge*, 102 Ind. 262, 1 N. E. 571.

⁵⁶ *Bauer v Sampson Lodge*, 102 Ind. 262, 1 N. E. 571. And see *Dickstein v Campbell*, 117 N. Y. Suppl. 158, in which it was held that before bringing suit for benefits wrongfully denied by a local it is not necessary that an appeal should have been taken to the district council or gen-

eral assembly. In this case no allusion was made to any provisions of the constitution or by-laws. It is therefore worthless as authority, because sufficient facts do not appear on the face of the opinion to enable the investigator to determine whether or not it was decided on correct principles.

⁵⁷ See *Supra* Chapter XVII, *How Actions Brought By or Against Unions*, Section 214.

⁵⁸ *Hanke v Cigar Makers' International Union*, 27 Misc. 529, 58 N. Y. Suppl. 412.

against designated officers of the union or against all the members, an action against an officer other than those designated is not well brought. It should be brought against the officer designated or against all the members.⁵⁹

§ 340. — — — Defenses.

To an action for a death benefit, it is no defense that the deceased member who was otherwise in good financial standing at the time of his death had failed to pay a fine imposed on him *ex parte* and by an officer having no power to impose it,⁶⁰ and if the defense is set up that decedent had not been a member for the required length of time, the burden is on defendant to prove that fact.⁶¹

§ 341. — — — In England and Canada.

To reach a clear understanding of the English and Canadian law on this subject, a consideration of the status of labor unions at common law and the effect of the provisions of the Trade Union Statutes of 1871 and 1875 is necessary. Prior to the passage of the act of 1871, a labor union was an unlawful association in England and none of the contracts contained in its rules were enforceable.⁶² By section 3 of the act it is provided that "the purposes of any trade union shall not, by reason merely that they are in restraint of trade, be unlawful so as to render void or voidable any agreement or trust. By section 4 however, it is further provided that nothing in the act shall enable any court to entertain any legal proceeding instituted with the object of directly enforcing or recovering any damages for the breach of any agreement for the application of the funds of a union to provide benefits to members. The net result of this somewhat singular legislation, so far as direct actions to enforce payment of benefits is concerned, is to leave the law precisely as it was before the passage of the act. In other words with reference to an application to directly enforce an agreement of the character under consideration, the statute does not

⁵⁹ Hanke v Cigar Makers' International Union, 27 Misc. 529, 58 N. Y. Suppl. 412.

⁶⁰ Screwmen's Benev. Ass'n v O'Donohue, 25 Tex. Civ. App. 254, 60 S. W. 683.

⁶¹ Weiss v Tennant, 2 Misc. 213, 21 N. Y. Suppl. 252.

⁶² Pennant on Trade Unions And The Law, p. 16; Farrer v Close, L. R. 4 Q. B. 602, 10 B. & S. 533, 38 L. J. M. C. 132; Hornby v Close, L. R. 2 Q. B. 153, 36 L. J. M. C. 53, 15 L. T. 563; Hilton v Eckersley, 6 El. & Bl. 47, 25 L. J. Q. B. 199.

confer any power and does not take away any power if it existed.⁶⁸ In consequence, the courts will not entertain any action, the object of which is the direct enforcement by a member of a labor union,⁶⁹ or a personal representative of a deceased member,⁷⁰ of a participation in benefits, and this is especially true where the rules which make provision for benefits are merely ancillary to the main object of the union and cannot be separated from it.⁷¹ By section 10 of the Conspiracy and Protection of Property Act of 1875, it is provided that a member not under the age of 16 years, may by writing nominate a person to whom any moneys payable on the death of such member not exceeding 50 shall be paid, and that on receiving proof of the death of a nominator the union "shall pay to the nominee the amount due to the deceased member. By section 1 of this act it is provided that the acts of 1871 and 1875 are to be construed as one act. It was held, construing section 10 of the Act of 1875 with section 4 of the Act of 1871, that the nominee of a deceased member could not maintain an action to recover a sum of money due the latter under the rules of the union. In this case

⁶⁸ *Rigby v Connol*, 14 Ch. 482, 49 L. J. Ch. 328, 42 L. T. 139, (in which it was further said that the object of the Trade Union Act of 1871 was to make trades unions, which were illegal on account of their rules being in restraint of trade, legal for certain purposes such as to enable them to sue and be sued and to hold property, but was not to make contracts of members of such unions legal *inter se* and capable of being enforced); *Cullen v Elwin*, 90 L. T. 840, (affirming 88 L. T. 686).

⁶⁹ *Chamberlain's Wharf Limited v Smith*, (1900) 2 Ch. 605, 69 L. J. Ch. 783, 83 L. T. 238; *Sayer v Amalgamated Society of Carpenters*, 19 T. L. Rep. 122; *Rigby v Connol*, 14 Ch. Div. 482, 49 L. J. Ch. 328; 42 L. T. 139; *Duke v Littleboy*, 49 L. J. Ch. 802, 43 L. T. 216; *Old v Robson*, 59 L. J. M. C. 41, 62 L. T. 282; *Alfin v Hewlett*, 18 T. L. Rep. 664; *Cullen v Elwin*, 90 L. T. 840,

(affirming 88 L. T. 686, and distinguishing *Swaine v Wilson*, 24 Q. B. D. 252, 59 L. J. Q. B. 76, 62 L. T. 309); *Beaulieu v Cochrane*, 29 Ont. (Can.) 151. And see dictum in *Burke v Amalgamated Society of Dyers*, 75 L. J. K. B. 533. Compare *Gozney v Bristol Trade & Provident Society*, (1909) 1 K. B. 901, (reversing 24 T. L. R. 814), which holds that an association though registered as a trade union which has as its objects the payment of sick benefits and the allowance of strike pay is not an illegal association independently of the relieving provisions of the Trade Union Acts, and the courts have jurisdiction to entertain a suit to receive sick benefits.

⁷⁰ *Russell v Amalgamated Society of Carpenters*, 25 T. L. R. 520.

⁷¹ *Cullen v Elwin*, 90 L. T. 840, 20 T. L. Rep. 490, (affirming 88 L. T. 686).

the view was taken that the object of section 10 was merely to enable the member, without the necessity of making a will and putting his estate to the expense of probate, to give away any small sum of money that might be due him from the union.⁶⁷

§ 342. — Suits to enjoin payment of benefits.

Under the English Trade Union Law, it is held that where the officers of a union refuse to take legal proceedings to prevent the union from paying strike benefits contrary to the rules of the union, a member in behalf of himself and the other members of the union may institute such proceedings.⁶⁸ A suit of this character, it is said, is not an action to recover damages for the breach of an agreement nor an action to enforce an agreement, within the meaning of section 4 of the Trade Union Act of 1871 providing that nothing therein contained shall enable any court to entertain any legal proceedings instituted with the object of directly enforcing an agreement for the application of the funds of a union to provide benefits to its members, nor to recover damages for breach of such agreement.⁶⁹ The officers should be added as defendants to such action. While they should not be personally affected as to the past application of the funds by anything decided in the action, the order for an injunction relating to the future application of the funds will apply to them as much as to any other members of the association.⁷⁰

§ 343. Right to sue to recover or prevent misapplication of funds of union.⁷¹

Members of a union formed for the ordinary lawful purposes, may on behalf of themselves and all other members, maintain a suit to recover money belonging to the union (money deposited in bank by its officers which they refuse to restore to the control of the union),⁷² and this right of action is not affected by the fact that,

⁶⁷ Crocker v Knight, 66 L. T. 596, (affirming 66 L. T. 188), 61 L. J. Q. B. 466, (1892) 1 Q. B. 702.

⁶⁸ Howden v Yorkshire Miners' Ass'n, (1903) 1 K. B. 308, 72 L. J. K. B. 176, 88 L. T. N. S. 134.

⁶⁹ Yorkshire Miners' Assoc. v Howden, (1905) A. C. 256, 74 L. J. K. B. 511, 92 L. T. N. S. 701, 21 T.

L. R. 431, 53 W. R. 667 (affirming (1903) 1 K. B. 308, 72 L. J. K. B. 176, 88 L. T. N. S. 134).

⁷⁰ Howden v Yorkshire Miners' Ass'n, (1903) 1 K. B. 308, 72 L. J. K. B. 176, 88 L. T. N. S. 134.

⁷¹ And see the preceding section.

⁷² Snow v Wheeler, 113 Mass. 179.

in carrying out the purposes of the union some of its members have perpetrated unlawful acts outside of the declared and real purposes of the union. Each unlawful act stands by itself to be answered for only by those who join in its perpetration.⁷³ So, by parity of reasoning, a member, or some of the members of the union in behalf of themselves and other members, may maintain a bill to prevent a misapplication of the funds of the union by its officers or by other members.⁷⁴ In England prior to the Trade Union Act of 1871, labor unions were illegal, and were illegal in such a sense that the workmen could not bring actions to enforce their rights *inter se*, and they could not succeed in prosecutions of officers of the combination or association for misappropriation of funds.⁷⁵ Since the passage of that act the misappropriation or misapplication of funds of a union may be restrained by injunction by parties interested in the fund, and it was accordingly held that some of the members in behalf of themselves and all other members except the defendants might bring suit to restrain other members from applying the funds in a manner contrary to an agreement to provide benefits to members.⁷⁶ Such a suit it was held was not an action to directly enforce an agreement, or to recover damages for breach of an agreement within a provision of the Trade Union Act of 1871, that nothing therein contained should enable any court to entertain any proceedings instituted with the object of directly enforcing or recovering any damages for breach of any agreement for the application of the funds of a union to provide benefits to members. All that is sought is to prevent payment of the funds to somebody else and the proceedings can be maintained.⁷⁷ It was similarly held that the members, suing in behalf of themselves and all other members, could maintain an action to enjoin the officers from em-

⁷³ *Snow v Wheeler*, 113 Mass. 179.

⁷⁴ *Flaherty v Portland Longshoremen's Benevolent Society*, 99 Me. 253, 59 Atl. 58. And see *Snow v Wheeler*, 113 Mass. 179.

⁷⁵ *Howden v Yorkshire Miners' Ass'n*, 72 L. J. K. B. 176, (1903) 1 K. B. 308, 88 L. T. 1341, per Williams L. J.; *Farrer v Close*, L. R. 4 Q. B. 602, 10 B. & S. 533, 38 L. J.

M. C. 132; *Hornby v Close*, L. R. 2 Q. B. 153, 36 L. J. M. C. 43, 15 L. T. 563.

⁷⁶ *Wolfe v Matthews*, 21 Ch. Div. 194, 47 L. T. 158.

⁷⁷ *Wolfe v Matthews*, 21 Ch. Div. 194, 47 L. T. 158 (distinguishing *Rigby v Connol*, 14 Ch. D. 482) And see *Cope v Crossley*, 24 T. L. R. 817.

ploying the funds of the union in defense of one of its officers, in accordance with an *ultra vires* resolution purporting to authorize such action,⁷⁸ or to prevent the officers from enforcing *ultra vires* rules for levying assessments on the members and applying the funds of the society to the election and maintenance of parliamentary representatives.⁷⁹

§ 344. Assignment of funds by members and suits to compel assignment.

Where by the provisions of the constitution, the members in good standing have sole control of the funds of the union, an assignment of the funds by members in good standing in pursuance of action had at a meeting regularly had is valid. Members suspended for arrearages in dues are not necessary parties to the assignment, notwithstanding they may have had a contingent interest in the funds, dependent on reinstatement upon payment of arrearages and dues.⁸⁰ Where the funds of a union formed for lawful purposes are deposited for its use in the name of trustees in a bank, and the name of the union is thereafter changed by vote of its members regularly taken, and one of the trustees refuses to join in an assignment of the funds to his successors, without which assignment the bank would not transfer the funds to their successors, the members of the union might maintain a bill in behalf of themselves and their associates to compel such assignment.⁸¹

§ 345. Rights of members on dissolution and winding up.

On the dissolution of a union, there is a resulting trust in favor of those who contributed to the funds and who were members on the date of the dissolution.⁸² These funds should be distributed among such members in accordance with the rules of the unions,⁸³ or if there be no rules for distribution of goods on dissolution, they should be distributed in the proportion in which the members have sub-

⁷⁸ *Alfin v Hewlett*, 18 T. L. R. 664.

⁷⁹ *Osborne v Amalgamated Society of Railway Servants* L. R. (1909) 1 Ch. 163 (reversing 24 T. L. R. 827).

⁸⁰ *Brown v Stoerkel*, 74 Mich. 269, 41 N. W. 921, 3 L. R. A. 430.

⁸¹ *Birmingham v Gallagher*, 112 Mass. 190.

⁸² *In Re Printers' and Transferers' Soc.*, 68 L. J. Ch. 537, (1899) 2 Ch. 184, 47 W. R. 619; *Strick v Swansea Tin Plate Co.*, 36 Ch. D. 558, 57 L. J. Ch. 438, 57 L. T. 392, 35 W. R. 831.

⁸³ *Strick v Swansea Tin Plate Co.*, 36 Ch. D. 558, 57 L. J. Ch. 438, 57 L. T. 392, 35 W. R. 831.

scribed thereto.⁸⁴ Courts of equity may supervise the distribution of funds on winding up in accordance with the rules, and any illegality in the rules arising from their being merely in restraint of trade, if they are not illegal on any ground beyond that, is not such an illegality as to prevent the court giving effect to the rules in the winding up.⁸⁵ After the court has directed an inquiry as to the persons entitled to participate in the funds of a union which has been wound up, it is too late to object that a statute prevents the court from distributing the assets.⁸⁶

⁸⁴ *In Re Printers' and Transferers' Soc.*, 68 N. J. Ch. 537, (1899) 2 Ch. 184, 47 W. R. 619.

⁸⁵ *Strick v Swansea Tin Plate Co.*, 36 Ch. D. 558, 57 L. J. Ch. 438, 57

L. T. 392, 35 W. R. 831.

⁸⁶ *Strick v Swansea Tin Plate Co.*, 36 Ch. D. 558, 57 L. J. Ch. 438, 57 L. T. 392, 35 W. R. 831.

CHAPTER XXVI.

CONTINUED—GENERAL AND LOCAL UNIONS.

- § 346. Right of general and local unions to withdraw from association with each other.
- § 347. Power of general union to exercise disciplinary measures.
- § 348. Grounds for suspension or revocation of charter.
- § 349. Proceedings for suspension or revocation—Necessity for notice and hearing.
- § 350. Requisites of notice and service of notice.
- § 351. Hearing and determination.
- § 352. Operation and effect of revocation of charter.
- § 353. Rights of property interest.
- § 354. Power of general union to vest title to property of local in itself through its own decree.
- § 355. Transfer of title to property on incorporation and amalgamation of unions.

§ 346. Right of general and local unions to withdraw from association with each other.

If a general union refuses to continue association with one of its locals, both being voluntary unincorporated associations, whether this action is based on a valid or invalid reason, a court of equity cannot enforce continuance of the relation voluntarily assumed in the absence of any question of property right.⁸⁷ "The very idea of voluntary organization is association mutually acceptable."⁸⁸ And on the other hand if a local desires to withdraw, the withdrawal cannot be prevented by injunction or otherwise, on the theory that the agreement of membership created a contract for the performance of the duties resulting from membership which a court would enforce by compelling the performance of the rules regulated by the duties.⁸⁹ Especially would the courts refuse to interfere to compel continuance of association, where one of the avowed objects of the union is an unjustifiable interference with the freedom of contract and of trade.⁹⁰

⁸⁷ O'Brien v Musical Mutual etc. Union, 64 N. J. Eq. 523, 54 Atl. 150.

⁸⁸ Mayer v Journeymen Stone Cutters' Ass'n, 47 N. J. Eq. 519, 524, 20 Atl. 492.

⁸⁹ O'Brien v Musical Mutual etc. Union, 64 N. J. Eq. 523, 54 Atl. 150.

⁹⁰ O'Brien v Musical Mutual etc. Union, 64 N. J. Eq. 523, 54 Atl. 150.

§ 347. Power of general union to exercise disciplinary measures.

The power of a general union to suspend or expel a local, like the power of a union to discipline its members,⁹¹ rests not in general law, but in the agreement between it and its locals, expressed in its constitution, rules and by-laws,⁹² except that the power of expulsion for conduct violative of the fundamental objects of the union, which conduct if persisted in would thwart or work destruction to these objects or bring the union into disrepute, is inherent in the union, independent of any express provisions to that effect.⁹³

§ 348. Grounds for suspension or revocation of charter.

As stated in the preceding section, any conduct on the part of a local which is clearly violative of the fundamental objects of the union and which if persisted in would tend to thwart or work destruction to these objects, or bring the union into disrepute would constitute a sufficient ground for the revocation of its charter,⁹⁴ and so would the violation of established rules which provide for expulsion for such violation.⁹⁵ On the other hand disobedience of a mandate which the general union has no authority to make,⁹⁶ or of a by-law which is void as against public policy,⁹⁷ is no ground for suspension or revocation of a charter.

§ 349. Proceedings for suspension or revocation—Necessity for notice and hearing.

As was shown in a preceding chapter, disciplinary measures cannot be exercised by a union against a member without giving him due notice of the charges on which the exercise of these measures is to be based, and a hearing or opportunity to be heard.⁹⁸ Now, in principle, there is no distinction between suspending or expelling a member, and suspending or revoking the charter of a local,⁹⁹ and it has been accordingly held that when a general union seeks to

⁹¹ See Supra Chapter XXV, *Membership*, Section 306.

⁹² *Grand Grove v Garibaldi Grove*, 130 Cal. 116, 62 Pac. 486, 80 Am. St. Rep. 80.

⁹³ See Supra Chapter XXV, *Membership*, Section 306.

⁹⁴ See as sustaining this view Supra Chapter XXV, *Membership*, Sections 306, 307.

⁹⁵ See Supra Chapter XXV, *Mem-*

bership, Section 307, and *O'Brien v Musical Mutual etc. Union*, 64 N. J. Eq. 523, 54 Atl. 150.

⁹⁶ See *State v Miller*, 66 Iowa 26, 23 N. W. 241.

⁹⁷ See Supra Chapter XXV, *Membership*, Sections 307, 308.

⁹⁸ See Supra Chapter XXV, *Membership*, Section 309.

⁹⁹ *Grand Grove v Garibaldi Grove*, 105 Cal. 219, 38 Pac. 947.

suspend, or expel a local, it is necessary that such local be given explicit notice of the charges made against it, and a hearing,¹ and this rule applies both where the by-laws so provide,² and where there is no such provision; indeed a by-law which dispenses with notice and hearing is unreasonable and void,³ for "it is a principle of natural justice that no one shall be condemned without an opportunity to be heard."⁴ Accordingly suspension or expulsion without notice or hearing is void.⁵

§ 350. Requisites of notice and service of notice.

The notice required must be in writing and specify some specific act or acts constituting the offense, and the time and place of trial,⁶ and if no other method of service is prescribed by the by-laws, it must be served on the members of the local. They may, however, where the constitution or by-laws so provide, be served vicariously by service on certain officers or other agents designated by them for the purpose. Service of this kind, however, is good only by virtue of the agreement of the members as thus expressed and would otherwise be void.⁷

§ 351. Hearing and determination.

In a proceeding to suspend or expel a local, the general union exercising the power, acts in a quasi-judicial character and must confine itself to the powers vested in it, and as in all cases of inferior tribunals its jurisdiction must affirmatively appear.⁸ Proceedings to suspend or expel a local must be had before, and a judgment rendered by, the tribunal or officer, designated by the laws of the union. A judgment of suspension rendered by an officer

¹ Hall v Supreme Lodge Knights of Honor, 24 Fed. 450; Grand Grove v Garibaldi Grove, 130 Cal. 116, 62 Pac. 486, 80 Am. St. Rep. 80; Grand Grove v Garibaldi Grove, 105 Cal. 219, 38 Pac. 947.

² St. Patrick's Alliance of America v Byrne, 59 N. J. Eq. 26, 44 Atl. 716.

³ Grand Grove v Garibaldi Grove, 105 Cal. 219, 38 Pac. 947. And see Supra Chapter XXV, *Membership*, Section 309.

⁴ Grand Grove v Garibaldi Grove, 105 Cal. 219, 38 Pac. 947.

⁵ See supra cases cited in this section.

⁶ Grand Grove v Garibaldi Grove, 130 Cal. 116, 62 Pac. 486, 80 Am. St. Rep. 80; Grand Grove v Garibaldi Grove, 105 Cal. 219, 38 Pac. 947.

⁷ Grand Grove v Garibaldi Grove, 130 Cal. 116, 62 Pac. 486, 80 Am. St. Rep. 80.

⁸ See Grand Grove v Garibaldi Grove, 130 Cal. 116, 62 Pac. 486, 80 Am. St. Rep. 80.

not vested with the requisite authority is void and inoperative,⁹ and it is, of course, immaterial how strong the grounds for taking such action may be.¹⁰ If, however, the proceedings are had before an officer vested with the requisite authority, any error in judgment is a mere irregularity and unless reversed by the appropriate tribunal, his judgment is conclusive on the parties and not subject to collateral attack. This is merely an application of the familiar principles that obtain in relation to the validity and effect of judicial determinations of controversies between citizens in the courts.¹¹

§ 352. Operation and effect of revocation of charter.¹²

The revocation by a general union of the charter of a local ends its powers so far, and so far only, as they were derived from the rules and regulations of the union.¹³ While such revocation terminates its existence as a part of the union, it does not operate to dissolve it as a voluntary society, or deprive it of its rights as such derived from the laws of the State. Until dissolved it can exist to collect its debts and pay its creditors and make distribution of its surplus.¹⁴ Revocation does not vest title to its property in the general union. That event breaks off the relation of the local with the parent body but not with its own treasury.¹⁵

§ 353. Rights of property *inter sese*.

The rights of a general and local union *inter sese* to property and funds in the hands of the local on its voluntary withdrawal from the union, or the revocation or suspension of its charter, depends largely on the provisions of the constitution and rules of the association relative to the subject, or on the absence of any such provisions. Thus where the constitution provides that the receipts of a local shall constitute a trust fund for carrying out the purposes of the association and that if the local shall from any

⁹ See *Circus v Independent Order Ahawa Israel*, 67 N. Y. Suppl. 342, 55 App. Div. 534; *Hall v Supreme Lodge Knights of Honor*, 24 Fed. 450.

¹⁰ See *Circus v Independent Order Ahawa Israel*, 67 N. Y. Suppl. 342, 55 App. Div. 534.

¹¹ *Hall v Supreme Lodge Knights of Honor*, 24 Fed. 450.

¹² And see the following sections.

¹³ *Wells v Monihan*, 129 N. Y. 161, 29 N. E. 232.

¹⁴ *Wells v Monihan*, 129 N. Y. 161, 29 N. E. 232.

¹⁵ *Wells v Monihan*, 129 N. Y. 161, 29 N. E. 232.

cause cease to exist, the fund shall revert to the general union, and a local disbands after voting to pay the money over to an order not connected with the union, this constitutes a diversion of the funds,¹⁶ and the officers and those assisting in the actual disposition of the funds are jointly and severally liable to the general union for the whole fund.¹⁷ And where it is provided by the charter of a local that in case it should be dissolved by forfeiture of charter or otherwise, all its property, moneys, etc., shall become the property of the general union; and the local disbands and divides all its effects among its members in good standing, a court of equity will compel those participating in the diversion to refund to the general union the money so received.¹⁸ On the other hand, if the laws of the association provide that a benefit fund, accumulated by a local shall be its property, there is of course no method by which the parent body or a receiver appointed for it can reach such funds.¹⁹ And where the general union has no arrangement, through its laws for the collection or distribution of certain classes of funds, (as for instance sick benefits or funeral benefits), and leaves such matters to the care of the locals, it has no interest in and is not entitled to recover from a local, a fund collected by it from its own members for their benefit, on termination of the association between it and the local in any manner,²⁰ and it seems that a statute is not intended to reach such fund, which provides that on dissolution or expulsion of a subordinate organization the moneys and property shall be delivered to the parent body to be held for the same purposes and intents for which they were received by the subordinate association.²¹ But even if it does, the parent body would in any event be required to hold it for the purposes for which it was created, and if on termination of the association between the general and local union, such fund is paid over in good faith to the beneficiaries ultimately entitled thereto,

¹⁶See *Grand Lodge v Germania Lodge*, 56 N. J. Eq. 63, 38 Atl. 341; *Schubert Lodge No. 118 v Schubert Kranken Untersturzen Verein*, 56 N. J. Eq. 78, 38 Atl. 347.

¹⁷See *Grand Lodge v Germania Lodge*, 56 N. J. Eq. 631, 38 Atl. 341.

¹⁸*State Council Order United American Mechanics v Sharp*, 38 N. J. Eq. 24.

¹⁹*Detroit Savings Bank v Haines*, 128 Mich. 38, 87 N. W. 93.

²⁰*State Council v Emery*, 219 Pa. St. 461, 68 Atl. 1023, 15 L. R. A. N. S. 336. And see as sustaining this view *Independent Order of Foresters v Donahue*, 91 Ill. App. 585.

²¹*State Council v Emery*, 219 Pa. St. 461, 68 Atl. 1023, 15 L. R. A. N. S. 336.

the parent body will not be permitted to recover the fund from the local, because this would amount to a diversion of the fund from the purposes of the trust in violation of the terms of the statute and of the constitutional provisions as to property rights.²²

§ 354. Power of general union to vest title to property of local in itself through its own decree.

Whatever may be the ultimate rights of a general and local union in and to property and funds in the hands of such local on revocation of its charter or termination of the relationship in any other manner, it is clear that the general union is without power to make a decree through the machinery of its domestic tribunals vesting title to such property in itself.²³ and this is so whether or not it assumes to act in accordance with its constitution, rules and by-laws giving it that power. Courts can never recognize as valid any rule or law so made, the effect of which is to confiscate property or arbitrarily to take away property rights from one set of members and give them to another set.²⁴ Parties cannot be legally bound by rules by which the most extensive judicial powers are conferred upon bodies of men whose individual members are subject to continual fluctuation.²⁵ The reason for the rule is obvious. The confiscation and forfeiture of property is an act of sovereign power,²⁶ and it is not conceivable that a union can exercise a power, which is forbidden to be exercised by Congress, or by the legislature of any state.²⁷

§ 355. Transfer of title to property on incorporation and amalgamation of unions.

Where money has been given by a community at large to different unincorporated unions to purchase land and erect a building thereon for such unions, which moneys are placed in the hands of certain individuals of the union for that purpose, who purchased land with buildings thereon taking the title in trust for

²² *State Council v Emery*, 219 Pa. St. 461, 68 Atl. 1023, 15 L. R. A. N. S. 336.

²³ *Wicks v Monihan*, 130 N. Y. 232, 29 N. E. 131, 14 L. R. A. 243; *Wells v Monihan*, 129 N. Y. 161, 29 N. E. 232. And see *Austin v Searing*, 16 N. Y. 112; *Goodman v Jedidjah*

Lodge, 67 Md. 117, 9 Atl. 13, 13 Atl. 627; *Lloyd v Loring*, 6 Vesey, 733.

²⁴ *Goodman v Jedidjah Lodge*, 67 Md. 117, 9 Atl. 13, 13 Atl. 627.

²⁵ *Austin v Searing*, 16 N. Y. 112.

²⁶ *Austin v Searing*, 16 N. Y. 112.

²⁷ *Wicks v Monihan*, 130 N. Y. 232, 29 N. E. 131, 14 L. R. A. 243.

such unions, after which all of them became incorporated in order to more effectually protect and carry out the purposes and interests of the association, such corporation has the right to demand and receive from the persons so holding title, a conveyance thereof without any formal request from the different unions.²⁸ By no other method could the individual rights of the individual members of the unions be secured. Such corporation and not the different unions has the right to take such title, and through it alone can the moneys so given, and the title so acquired, be managed for the benefit of all individuals who may become members.²⁹

²⁸ The Organized Labor Hall v Gebert, 48 N. J. Eq. 393, 22 Atl. 578.

²⁹ The Organized Labor Hall v Gebert, 48 N. J. Eq. 393, 22 Atl. 578.

CHAPTER XXVII.

UNION LABELS.

- § 356. Purpose of label and its value to unions and their members.
 - § 357. Protection to which label entitled—Introductory statement.
 - § 358. Whether entitled to protection as technical trade-mark.
 - § 359. Whether entitled to protection under Act of Congress, July 8, 1870.
 - § 360. Whether entitled to protection when used by member on goods made and sold by him.
 - § 361. Whether entitled to protection in absence of statute though not considered a trade-mark.
 - § 362. Statutory protection of labels.
 - § 363. Validity of statutes designed to protect labels considered from the standpoint of constitutionality—Introductory statement.
 - § 364. Deprivation of property without due process of law or denial of equal protection of laws.
 - § 365. Title of acts and unity of subject-matter.
 - § 366. Local, special or private laws.
 - § 367. Validity of statutes designed to protect labels considered from the standpoint of public policy.
 - § 368. Adoption of label.
 - § 369. Contents of label—Compliance with rules of morality and public policy.
 - § 370. Compliance with statutory requirements.
 - § 371. Misrepresentation of fact.
 - § 372. Assignability of label.
 - § 373. Abandonment of label.
 - § 374. Suits for injunction and other relief—Parties.
 - § 375. Bills.
 - § 376. Defenses.
 - § 377. Acts enjoined.
 - § 377a. Costs.
 - § 378. Allowance of profits.
 - § 379. Criminal prosecutions.
 - § 380. Actions to recover penalties for violation of statutes for protection of union labels.
- § 356. Purpose of label and its value to unions and their members.

Cross References:

For forms of bills to enjoin infringement of union labels see *Appendix* forms Nos. 14, 15.

For forms of information for infringement of union label, see forms Nos. 16, 17.

The union label is part of the well-known machinery of labor unions.³⁰ Its purpose is to indicate that the goods or receptacles of goods to which it is affixed were made solely by the members of the union adopting the label and to distinguish such goods from all others of a similar kind in the market.³¹ It is of value to the union and its members. The known reputation of a particular kind of skilled labor employed in the development of a particular product and class of products determines to a large degree the value or price of such products when put on the markets. To stamp or label a commodity as the product of a particular kind or class of skilled labor determines the demand for and the price of such product or commodity. The marketable prices of a commodity influence the scale of wages paid for its manufacture. The higher the price the higher the wages paid.³² Indeed, it has been said that it may not be too much to assume that the use of the label is in fact, as it certainly might be, of far more economic importance to the union, than are many or most of the trade-marks strictly so-called which are protected by the courts.³³

§ 357. Protection to which label entitled—Introductory statement.

The protection to which the union label is entitled will be considered in the following aspects: First, Whether it is a technical trade-mark and entitled to protection as such. Second, Whether it was entitled to protection under Act of Congress, July 8, 1870, since repealed. Third, Whether entitled to protection when used by a member of the union on goods made and sold by him. Fourth, Whether entitled to protection in absence of statute though not considered a technical trade-mark. Fifth, The protection afforded by state legislation enacted for that purpose.

§ 358. Whether entitled to protection as technical trade-mark.

Taking up these questions in the order given, the question whether a union label is a technical trade-mark and entitled to protection as such will be first considered. While the decisions are by no means harmonious, it has either been held or said in

³⁰ Tracy v Banker, 170 Mass. 266, A. 200.

49 N. E. 308, 39 L. R. A. 508.

³¹ People v Fisher, 50 Hun. 552, 3 133, 43 S. W. 180, 80 Am. St. Rep. 348, 39 L. R. A. 211.

N. Y. Suppl. 786, 20 N. Y. St. 537; State v Bishop, 128 Mo. 373, 31 S. ³² Tracy v Banker, 170 Mass. 266, 49 N. E. 308, 39 L. R. A. 508.

the majority of them, that a union label is not a technical trade-mark.³⁴ Accordingly it was held that a union label was not entitled to registration as a trade-mark,³⁵ and that a bill brought by some of the members of a union in behalf of all other members as well as themselves,³⁶ or by a local branch of the union,³⁷ or by some of the officers and members of a local branch of the union in behalf of themselves and all other members of the union,³⁸ to enjoin an infringement of the label, and *framed on the theory that the label was a technical trade-mark*, could not be maintained. Now, inasmuch, as there are decisions which will be subsequently considered in this section which are in conflict with these views a careful consideration of the reasons advanced in the support of both positions is rendered necessary. The reasons given why a union label falls short of being a trade-mark may be summarized as follows:

First, To acquire a valid trade-mark which the law will protect, it is necessary for one to adopt some marks or signs not in use by others to distinguish the goods manufactured or sold by him from those of other manufacturers or traders,³⁹ and it must

³⁴ *Connecticut*.—Lawlor v Merritt, 78 Conn. 630, 63 Atl. 639.

Kentucky.—Hetterman v Powers, 102 Ky. 133, 43 S. W. 180, 80 Am. St. 348, 39 L. R. A. 211.

Maryland.—Cigar Makers' Union No. 1, of Baltimore v Link, (Baltimore Cir. Ct. Maryland), 29 L. R. A. 202 note; Cigar Makers' Official Journal Nov. 1886.

Massachusetts.—Weener v Brayton, 152 Mass. 101, 25 N. E. 46, 8 L. R. A. 640.

Minnesota.—Cigar Makers' Protective Ass'n v Conhaim, 40 Minn. 243, 41 N. W. 943, 12 Am. St. Rep. 726, 3 L. R. A. 125.

Missouri.—State v Bishop, 128 Mo. 373, 31 S. W. 9, 49 Am. St. Rep. 569, 29 L. R. A. 200; State v Berlin-sheimer, 62 Mo. App. 168.

New Jersey.—Schmalz v Wooley, 56 N. J. Eq. 649, 39 Atl. 539; Schneider v Williams, 44 N. J. Eq.

391, 14 Atl. 812.

Pennsylvania.—McVey v Brendel, 144 Pa. St. 235, 22 Atl. 912, 27 Am. St. Rep. 625, 13 L. R. A. 377.

United States.—Carson v Ury, 39 Fed. 777.

³⁵ In re Cigar Makers' Ass'n, 16 Off. Gaz. 958.

³⁶ Schneider v Williams, 44 N. J. Eq. 391, 14 Atl. 812.

³⁷ Cigar Makers' Protective Assoc. v Conhaim, 40 Minn. 243, 41 N. W. 943, 12 Am. St. Rep. 726, 3 L. R. A. 125.

³⁸ Weener v Brayton, 152 Mass. 101, 25 N. E. 46, 8 L. R. A. 640; McVey v Brendel, 144 Pa. St. 235, 22 Atl. 912, 27 Am. St. Rep. 625, 13 L. R. A. 377.

³⁹ Weener v Brayton, 152 Mass. 101, 25 N. E. 46, 8 L. R. A. 640; Cigar Makers' Protective Ass'n v Conhaim, 40 Minn. 243, 41 N. W. 943, 12 Am. St. Rep. 726, 3 L. R. A. 125; State v

so distinguish them.⁴⁰ The union label does not fulfill this requirement. As previously shown, its purpose is to designate goods to which such label is attached, as work done by members of the union and to distinguish the goods thus labelled from goods of a similar kind made by persons other than members of the union.⁴¹ The goods to which the union label is attached, are not manufactured or sold by the union as an organization. The carrying on of a business enterprise is entirely foreign to the object and purposes of such organizations. It is, in consequence neither a manufacturer nor dealer and has no trade in which a trade-mark can be used.⁴²

Second, These marks or signs must be placed on some vendible commodity of which the person seeking to acquire the trade-mark is the manufacturer, or in which he trades.⁴³

Third, He must put his commodity upon the market marked with his mark.⁴⁴ Not being a manufacturer or dealer, the union

Bishop, 128 Mo. 373, 31 S. W. 9, 49 Am. St. Rep. 569, 29 L. R. A. 200; State v Berlinsheimer, 62 Mo. App. 168; Schmalz v Wooley, 56 N. J. Eq. 649, 39 Atl. 539; Schneider v Williams, 44 N. J. Eq. 391, 14 Atl. 812; McVey v Brendel, 144 Pa. St. 235, 22 Atl. 912, 27 Am. Rep. 625, 13 L. R. A. 377; In re Cigar Makers' Ass'n, 16 Off. Gaz. 958.

⁴⁰ Cigar Makers' Protective Ass'n v Conhaim, 40 Minn. 243, 41 N. W. 943, 12 Am. St. Rep. 726, 3 L. R. A. 125.

⁴¹ See supra, section 326.

⁴² *Massachusetts*.—Weener v Brayton, 152 Mass. 101, 25 N. E. 46, 8 L. R. A. 640.

Minnesota.—Cigar Makers' Protective Ass'n v Conhaim, 40 Minn. 243, 41 N. W. 943, 12 Am. St. Rep. 726, 3 L. R. A. 125.

Missouri.—State v Bishop, 128 Mo. 373, 31 S. W. 9, 49 Am. St. Rep. 569, 29 L. R. A. 200.

New Jersey.—Schneider v Williams, 44 N. J. Eq. 391, 14 Atl. 812.

Pennsylvania.—McVey v Brendel,

144 Pa. St. 235, 22 Atl. 912, 27 Am. St. Rep. 625, 13 L. R. A. 377.

United States.—In re Cigar Makers Ass'n, 16 Off. Gaz. 958.

Labor union not a common law "trader."—A union of cigar makers, the object of which is to promote the moral, physical and mental welfare of its members, and which is not engaged in the business of making and selling cigars, is not a trader within the meaning of the common law. McVey v Brendel, 144 Pa. St. 235, 22 Atl. 912, 27 Am. St. Rep. 625, 13 L. R. A. 377.

⁴³ Weener v Brayton, 152 Mass. 101, 25 N. E. 46, 8 L. R. A. 640; Schmalz v Wooley, 56 N. J. Eq. 649, 39 Atl. 539 (This case is reversed in 57 N. J. Eq. 303, 41 Atl. 939, 73 Am. St. Rep. 637, 43 L. R. A. 539, but, it is believed, is nevertheless correct); Schneider v Williams, 44 N. J. Eq. 391, 14 Atl. 812.

⁴⁴ Weener v Brayton, 152 Mass. 101, 25 N. E. 46, 8 L. R. A. 640; Schmalz v Wooley, 56 N. J. Eq. 649, 39 Atl.

cannot comply with either of these two requirements. The label, it is true, is placed on goods put in the market, but they are not goods of the union.

Fourth, The label does not indicate by what persons the articles labelled were made, but only indicates that they were made by one of many persons not connected with each other in any business.⁴⁵

Fifth, The members have no vendible interest in the label, but merely a right to use it, so long and only so long as their membership continues; it cannot be transferred with any business.⁴⁶

Sixth, There is no exclusiveness in the use or right to use, which is necessary to a legal trade-mark, but any one of a great number of persons, in no way connected in business and perhaps unknown to each other, has an equal right to use it.⁴⁷ It is necessary for those who claim that their right of property in a trade-mark has been invaded to show that they are in some way, by themselves or with others, the owners thereof by reason of some business which they are transacting together, and to which its use is incident, and not merely a personal privilege, which they possess as members of a particular association of wide extent, and embracing many persons of varied interest, to advertise or have advertised by those by whom they are employed, the articles made by them as being made by members of such association.⁴⁸

Decisions to the contrary will now be considered. The court of last resort in New Jersey reversing a decision of the chancellor, and in effect overruling another chancery decision, holds that according to general principles a workman or number of workmen engaged in the same branch of business and banded together for their mutual profit in the pursuit of their common vocation, may acquire a right of property in a trade-mark designed to distin-

539; *Schneider v Williams*, 44 N. J. Eq. 391, 14 Atl. 812.

⁴⁵ *Weener v Brayton*, 152 Mass. 101, 25 N. E. 46, 8 L. R. A. 640; *Cigar Makers' Protective Ass'n v Conhaim*, 40 Minn. 243, 41 N. W. 943, 12 Am. St. Rep. 726, 3 L. R. A. 125.

⁴⁶ *Weener v Brayton*, 152 Mass. 101, 25 N. E. 46, 8 L. R. A. 640; *Cigar Makers' Protective Ass'n v Conhaim*, 40 Minn. 243, 41 N. W. 943, 12 Am.

St. Rep. 726, 3 L. R. A. 125; *Carson v Urie*, 39 Fed. 777.

⁴⁷ *Weener v Brayton*, 152 Mass. 101, 25 N. E. 46, 8 L. R. A. 640; *Cigar Makers' Protective Ass'n v Conhaim*, 40 Minn. 243, 41 N. W. 943, 12 Am. St. Rep. 726, 3 L. R. A. 125.

⁴⁸ *Weener v Brayton*, 152 Mass. 101, 25 N. E. 46, 8 L. R. A. 640.

guish their workmanship from that of other persons and that a trade-mark so owned is entitled to the same protection as any other trade-mark.⁴⁹ Such also is the effect of a decision of the Chancery Division of Toronto,⁵⁰ and a decision of the Supreme Court of Minnesota, in which the judgment of the trial court was affirmed without opinion, the court being equally divided.⁵¹ This case, however, was overruled in a decision already noticed.⁵² To the same effect as the New Jersey decision are two decisions of the lower courts of New York.⁵³ In one of these it was held that some of the members of the Cigar Makers International Union suing in behalf of themselves and all others are entitled to an injunction to restrain the unauthorized use of a label adopted by the union to designate work done by its members, it appearing that cigar makers and the public have ever since the adoption of the label acquiesced in the exclusive right to the use of it by the members of the union, that the unauthorized use thereof is to deceive the public and induce the purchase of goods labeled therewith under the belief that they are made by the union, and that plaintiffs sustain irreparable damage thereby.⁵⁴ In the other a conviction was upheld against one who had counterfeited this label and affixed the counterfeit to articles of merchandise, the prosecution being based on a statute making it an offense to counterfeit or imitate a trade-mark or affix to any article of merchandise a false or counterfeit trade-mark knowing it to be counterfeit.⁵⁵ It may be noted in passing, that in this last decision the court mentions a statute of New York defining trade-marks, but inasmuch as this statutory definition is practically the same as the common law definition, it may reasonably be assumed that the influence of this statute on the conclusions reached was neg-

⁴⁹ *Schmalz v Wooley*, 57 N. J. Eq. 303, 41 Atl. 939, 73 Am. St. Rep. 637, 43 L. R. A. 86, (reversing 56 N. J. Eq. 649, 39 Atl. 539, and overruling in effect *Schneider v Williams*, 44 N. J. Eq. 391, 14 Atl. 812).

⁵⁰ *Rodd v Brewer*, (Chancery Division Toronto) 29 L. R. A. 202 note, *Cigar Makers' Official Journal* March 1891.

⁵¹ *Allen v McCarthy*, 37 Minn. 349, 34 N. W. 416.

⁵² See *Cigar Makers' Protective Ass'n v Conhaim*, 40 Minn. 243, 41 N. W. 943, 12 Am. St. Rep. 726, 3 L. R. A. 125.

⁵³ *People v Fisher*, 50 Hun. 552, 3 N. Y. Suppl. 786; *Bloete v Simon*, 19 Abb. N. C. (N. Y.) 88.

⁵⁴ *Bloete v Simon*, 19 Abb. N. C. (N. Y.) 88.

⁵⁵ *People v Fisher*, 50 Hun. 552, 3 N. Y. Suppl. 786, 20 N. Y. St. 537.

ligible. In support of the rule laid down by the New York decisions the following reasons were given: First, "The only recognized indication of a trade-mark is the source, origin or ownership of the article of merchandise on which it is placed. * * * * This means that the trade-mark is calculated to distinguish the articles which bear it from those of other makers or vendors. It need not indicate any particular person as maker, manufacturer or vendor, or give the name or address of either. When the mark has become recognized by purchasers as a distinctive description of a particular maker, manufacturer or seller of a certain quality of goods, it will be sufficient indication of the origin or ownership within the rule requisite to its protection as such, although purchasers may not, from the work or otherwise, be able to tell who is the particular maker or seller of the article. * * * * Second, The fact that goods are produced by the work of one person in the service of another to whom they belong, and that a label cannot be placed upon them without the consent of the owner, does not seem to be in the way of the right of the workmen through the means of a trade-mark which he may have devised and caused to be affixed to the product of his labor, to have property in such trade-mark entitled to protection as such. * * * * Third, The fact that their work is not performed under a single employment, but under many different employers in as many widely separated shops, may go to the value of the mark in its application to the cigars made by them, rather than to the rights to its protection as such."⁵⁶ The New Jersey Court in support of its holding quotes a passage of an earlier decision of the Chancery Court of that state on the method of acquiring a trade-mark, which is as follows: "First, he must select or adopt some mark or sign not in use to distinguish goods of the same class or kind already on the market, belonging to another trader; second, he must apply his mark to some article of traffic; and third, he must put his article marked with his mark upon the market." The court takes the view that the third requirement alleged is unnecessary, and says that "it is undisputed that this association has complied with the first two requirements." On this proposition the court is in error. If it be assumed that the language quoted might mean that the mere adoption of a label by a union and the placing of it

⁵⁶ People v Fisher, 50 Hun. 552, 3 N. Y. Suppl. 786, 20 N. Y. St. 537.

on goods not manufactured or traded in by the union would satisfy such requirements, a further statement in the opinion from which the quotation is taken clearly negatives any such construction. It is further said that the bill is fatally defective because it does not show 'that the complainants have applied their mark or label to a vendible commodity *of which they are owners, or in which they trade* and that they have put such commodity marked with their mark upon the market.'"⁵⁷ The error in the latter New Jersey decision and decisions in which similar conclusions have been reached, consists in ignoring the fact that the union does not own, manufacture or sell the goods to which the label is attached, a vital element of a common law-trade-mark. Without affirming or denying the correctness of all the reasons herein enumerated for denying to union labels the protection accorded to trade-marks, the same being unnecessary to a determination of the question under consideration, a review of the decisions and a consideration of the elementary principles of trade-mark law, makes the conclusion necessary that the union not being the owner, manufacturer, or seller of the goods to which the label is attached, the label is not a valid trade-mark nor entitled to protection as such.⁵⁸

§ 359. Whether entitled to protection under act of Congress July 8, 1870.

It has been held that a union label was not entitled to protection under Act of Congress July 8, 1870, (since repealed), which provided that protection may be obtained for a lawful trade-mark by recording in the patent office "a statement specifying the names of the parties, and their residences and places of business; * * * * the class of merchandise, and the particular description of goods comprised in such class, by which the trade-

⁵⁷ See *Schneider v Williams*, 44 N. J. Eq. 391, 396, 14 Atl. 812.

⁵⁸ As supporting this view in addition to the cases reviewed in this section see definitions of trade-mark in the following works: *Abbott's Law Dictionary*; 28 Am. & Eng. Ency. L. (2nd ed.) p. 346; *Anderson's Law Dictionary*; *Black's Law Dictionary*;

Brown's Law Dictionary; *Bouvier's Law Dictionary*; *Hesseltine on Trade-Marks*, pp. 1-5, and numerous cases from which definitions are quoted; *Paul on Trade-Marks*, section 1; *Rapalje & Lawrence's Dictionary*. And see generally *Hesseltine on Trade-Marks* p. 22 *et seq*; *Browne on Trade-Marks*, sections 85, 87.

mark has been or is intended to be appropriated.⁵⁹ This provision of the act, it was said, clearly contemplated an actual business conducted by the person or persons named, the adoption of a trade-mark in that business, and its appropriation to a particular "class of merchandise" produced or sold by the parties making the registration.⁶⁰

§ 360. Whether entitled to protection when used by member on goods made and sold by him.

A manufacturer of cigars and member of the Cigar Makers' International Union, who uses the label adopted by the union on boxes of cigars manufactured and sold by him, as he is entitled to do under the laws of the union, is entitled to an injunction to restrain persons not members of the union from making and selling counterfeits of the union label, where he shows that his trade has been damaged by the acts complained of. Even though the label lacks the characteristics of a valid trade-mark and cannot be protected as such, a bill will lie to enjoin the perpetration of a fraud which injures plaintiff's business and occasions him a pecuniary loss.⁶¹ This case, it will be observed, is very easily distinguishable from those considered in section 3; here the complainant is actually engaged in manufacturing and selling on his own account the goods to which he, as he had the right to do, attached the union label. In the cases considered in section 3, the members of the union were making goods not on their own account but as employes.

⁵⁹ *McVey v Brendel*, 144 Pa. St. 235, 22 Atl. 912, 27 Am. St. Rep. 625, 13 L. R. A. 377; *Cigar Makers' Ass'n of the Pacific Coast*, 16 Off. Gaz. 958.

⁶⁰ *McVey v Brendel*, 144 Pa. St. 235, 22 Atl. 912, 27 Am. St. Rep. 625, 13 L. R. A. 377.

⁶¹ *Carson v Ury*, 39 Fed. 777. "Even where no trade-mark was infringed or involved, courts of equity have granted injunctions upon more than one occasion against the use upon goods, of certain marks, labels,

wrappers, etc., where the evident design of such use was to deceive the public by concealing the true origin of the goods, and making it appear that they were the product of some other manufacturer of established reputation, thereby depriving the latter of a portion of the patronage that would otherwise have come to him, or injuring the reputation of his goods;" *Carson v Ury*, 39 Fed. 777, (citing *Croft v Day*, 7 Beav. 84; *McLean v Fleming*, 96 U. S. 245; *Newman v Alvord*, 51 N. Y. 189; *Avery v Meikle*, 81 Ky. 73).

§ 361. Whether entitled to protection in absence of statute though not considered a trade-mark.

The next question for consideration is whether a union label, though considered not a technical trade-mark, is entitled to protection in the absence of legislation expressly conferring it. It by no means follows that the label is not entitled to protection merely because the law for the protection of technical trade-marks cannot be invoked for that purpose. There are, however, decisions which in effect so declare, and, it is believed, erroneously. Thus it was held in one case that members or officers of a trade-union cannot, for the purpose of protecting a label adopted by the union to designate goods made by its members invoke the doctrine that equity will protect a label, though not technically a trade-mark, where there appears to be a design to deceive the public by concealing the true origin of the goods and to make it appear that they were the goods of another. The view taken was that this rule is applicable only in case of one who is himself a manufacturer, dealer in, or owner of the articles which were fraudulently represented by the counterfeit labels to be his.⁶² This view finds support in two other decisions in which it was declared that statutes enacted for the protection of union labels create a new right of action and a new cause of action.⁶³ On the other hand it has been said, and with excellent reason, that the law may be justly invoked by organized labor to protect from piracy and intrusion the fruits of its skill and handiwork, and that brain and muscle may be the subjects of trade-law rules, as well as tangible property.⁶⁴ The view was taken that a label adopted by a union to designate the work of its members, and which increases the value of their labor is a property right of the union, in which all the members have a common interest, and that this right will be protected by injunction, though the members are mere employes not engaged in business for themselves and do not own the goods to which the label is attached.⁶⁵ Accord-

⁶² *Weener v Brayton*, 152 Mass. 101, 25 N. E. 46, 8 L. R. A. 640.

⁶³ *Lawlor v Merritt*, 78 Conn. 629, 63 Atl. 639; *Tracy v Banker*, 170 Mass. 266, 49 N. E. 308, 39 L. R. A. 508.

⁶⁴ *Hetterman v Powers*, 102 Ky. 133,

43 S. W. 180, 80 Am. St. Rep. 348, 39 L. R. A. 211; *Strasser v Moonelis*, 55 N. Y. Super. Ct. 197, 11 N. Y. St. 270.

⁶⁵ *Hetterman v Powers*, 102 Ky. 133, 43 S. W. 180, 80 Am. St. Rep. 348, 39 L. R. A. 211; *Cigar Makers'*

ingly it was held that on a bill brought by some of the members of a union on behalf of themselves and all others, an injunction would be granted to restrain the unauthorized use of the union label,⁶⁶ or the use of fraudulent imitations thereof.⁶⁷ This view of the law is unquestionably the correct one, and the following reasons may be assigned therefore.

First, Labor unions are not now beyond the pale of the law, as some of the early English and American cases seem to show was formerly the case, but on the contrary are considered not only lawful but commendable organizations and entitled to the same protection of the law as any other voluntary association. This proposition is so well established and elementary, that the citation of authority therefor is useless.

Second, The adoption and use of labels by unions is, in no sense, against public policy. This is demonstrated beyond dispute by the great mass of recent legislation authorizing it, and the decisions sustaining such legislation.⁶⁸

Third, Like other voluntary associations, they can own property as well as can a partnership,⁶⁹ and it being shown that the label enhances the value of the goods to which it is affixed and in consequence the demand for and value of the services of the members

Union No. 1 of Baltimore v Link, (Baltimore Cir. Ct. Md.) 29 L. R. A. 202 note; Cigar Makers' Official Journal Nov. 1886; Strasser v Moonelis, 55 N. Y. Super Ct. 197, 11 N. Y. St. 270 (An appeal to the Court of Appeals from the judgment in this case—reported in 108 N. Y. 611, 15 N. E. 730—was dismissed on a point of practice, and hence cannot be considered as an affirmance of the rule therein announced). And see as sustaining the rule stated in the text, State v Hagen, 6 Ind. App. 167, 33 N. E. 223, in which it was said: "We do not here have occasion to determine whether to enforce this right in equity, an action must necessarily be brought by some member who is actually engaged in manufacturing or selling on his own account, or whether any member who is act-

ually engaged at his trade of making cigars, and is, or is liable to be, specially injured by the use of the false labels, may maintain his action in equity, although it is difficult to perceive why the latter is not, upon principle, the proper view of the law."

⁶⁶ Hetterman v Powers, 102 Ky. 133, 43 S. W. 180, 80 Am. St. Rep. 348, 39 L. R. A. 211; Cigar Makers' Union No. 1 of Baltimore v Link, (Baltimore Cir. Ct. Md.) 29 L. R. A. 202 note; Cigar Makers' Official Journal Nov. 1886.

⁶⁷ Strasser v Moonelis, 55 N. Y. Super. Ct. 197, 11 N. Y. St. 270.

⁶⁸ See *Infra*, sections 362 et seq.

⁶⁹ Cigar Makers' Union No. 1 of Baltimore v Link, (Baltimore Cir. Ct. Md.) 29 L. R. A. 203; Cigar Makers' Official Journal Nov. 1886.

of the union who make the goods, the union has a property right therein, in which the members have a common interest, because the essentials of property are here present, namely, a distinguishable existence in the instrumentality claimed as property and an actual value in that instrumentality to the true owner.⁷⁰

Fourth, The property right which the union has in the label is an outgrowth of new economic conditions, and even in the absence of precedent the law will adapt itself to meet these new conditions in order to protect the rights thus created. As was said in one of the earliest cases on the subject, the idea of property is necessarily a progressive one, capable of development corresponding to the changes in the relations of men in a growing society and the rules attending it must keep pace with its increase and improvement and must be adapted to every case.⁷¹ And in a federal decision of very recent date it was said: "A court of equity, in the exercise of its power, and a chancellor, in the exercise of his judicial discretion, may conform his rulings to the exigencies of a changing society, so that there can be no situation arising out of modern complexities which cannot be dealt with by a court of equity, provided a wrong has been done, and he who is entitled to the protection of the law comes into court and asks for that protection."⁷²

The conclusion therefore is, that even in the absence of any legislation on the subject, a court of equity should protect by injunction, a union label shown or admitted to be of value, provided there is nothing in the contents of the label which amounts to an infraction of the rules of morality and public policy; and as respects evidence of value, the mere fact of piracy would possess considerable weight for the reason that one does not wrongfully appropriate or steal the possessions of another unless they are valuable.

§ 362. Statutory protection of labels.

Influenced, doubtless, by the adverse decisions of the courts,

⁷⁰ Cigar Makers' Union No. 1 of Baltimore v Link, (Baltimore Cir. Ct. Md.) 29 L. R. A. 203; Cigar Makers' Official Journal Nov. 1886. And see *supra* section 356 on the question of the value of union labels.

Baltimore v Link, (Baltimore Cir. Ct. Md.) 29 L. R. A. 203; Cigar Makers' Official Journal Nov. 1886.

⁷² Rocky Mountain Bell Tel. Co. v Montana Federation of Labor, 156 Fed. 809.

⁷¹ Cigar Makers' Union No. 1 of

labor unions have procured legislation in a large number of states, for the purpose of protecting their labels from infringement. These statutes, though varying somewhat in phraseology, usually provide in substance that where a union or association of workmen has adopted a label, trade-mark or device to designate goods to which it is attached as made by its members, and has complied with the requirements of the statutes, it may enjoin the manufacture, sale, display or use of any counterfeit or imitation of such label, trade-mark, or device, and recover the damages resulting therefrom and the profits derived from such wrongful manufacture, sale, display or use. So some of the statutes provide that the commission of the acts mentioned shall constitute a misdemeanor and that the person committing them shall be punishable by fine or imprisonment or both, and some statutes authorize the recovery of penalties therefor. Registration, as is usual in case of trade-marks, is required, and some of the statutes provide that the label, trade-mark or device shall announce that the goods to which it is attached were made by a member or members of the union. In case of unincorporated unions, some statutes provide that suits under its provisions may be commenced and prosecuted by an officer or member, on behalf of and for the use of such union.⁷³ These statutes have been frequently brought before the courts for construction. With the exception of one decision which was subsequently overruled,⁷⁴ it is held that to obtain the benefit of the statutes it is not necessary that the union be a manufacturer or vendor of goods,⁷⁵ and the label a technical trade-mark.⁷⁶ While the statutes contemplate that the labels will be applied to merchandise, as of course they must be, they apply to labor unions as they ordinarily are, that is as associations of workmen, not as manufacturers or vendors of goods.⁷⁷ This conclusion seems inevitable in consideration of the facts that it is matter of common knowledge that labor unions are in no sense business organizations nor engaged as such in the manufacture

⁷³ See statutes of the various states.

⁷⁴ *State v Berlinsheimer*, 62 Mo. App. 108.

⁷⁵ *Tracy v Banker*, 170 Mass. 266, 49 N. E. 308, 39 L. R. A. 508.

⁷⁶ *State v Bishop*, 128 Mo. 370, 31 S. W. 9, 49 Am. St. Rep. 569, 29 L.

R. A. 200, (overruling *State v Berlinsheimer*, 62 Mo. App. 108). And see *State v St. Clair*, (Mo. App.) 117 S. W. 648.

⁷⁷ *Tracy v Banker*, 170 Mass. 266, 49 N. E. 308, 39 L. R. A. 508.

or sale of goods; that a number of the courts had held that union labels were not technical trade-marks nor entitled to protection as such; and that the enactment of the statutes in question was the direct outcome of these adverse decisions and designed to remedy what the unions, with reason, considered a flagrant evil. The validity of these statutes has almost uniformly been upheld,⁷⁸ and it is held that in cases coming within their provisions, injunctions lie to protect unions in the use of their labels,⁷⁹ and that persons violating the provisions of the statutes are punishable as for misdemeanors,⁸⁰ or subject to the payment of a penalty.⁸¹ In so far as these statutes relate to civil remedies, they are entitled to a liberal construction in order to effectuate the purposes for which they are designed,⁸² but are subject to strict construction where it is sought to render one criminally liable for a violation of their provisions.⁸³ It was held under a statute providing that "any firm, person, corporation or voluntary association that are citizens of the State of Indiana," and "who are entitled to the exclusive use of any lawful trade-mark, label, brand, stamp or wrapper may obtain protection therefor, by complying with the statutory requirements in respect of registration and making it

⁷⁸ See *Infra*, section 363 et seq.

⁷⁹ *Iowa*.—*Beebe v Tolerton*, 117 Iowa 593, 91 N. W. 905.

Massachusetts.—*Tracy v Banker*, 170 Mass. 266, 49 N. E. 308, 39 L. R. A. 508.

New Jersey.—*United Garment Workers of America v Davis*, 74 Atl. 306.

New York.—*Perkins v Heert*, 158 N. Y. 306, 53 N. E. 18, 70 Am. St. Rep. 483, 43 L. R. A. 858, (affirming 39 N. Y. Suppl. 223, 5 N. Y. App. Div. 333); *Myrup v Friedman*, 110 N. Y. Suppl. 1106; *Lynch v John Single Paper Co.*, 101 N. Y. Suppl. 824.

Ohio.—*Cigar Makers' International Union v Lindner*, 3 Ohio Dec. 244; *Coyle v Haight*, (Ohio Stark Com. Pleas) 29 L. R. A. 207, note, *Cigar Makers' Official Journal* September

1890; *Strauss v Scheinman*, (Wayne County Cir. Ct. Ohio) 29 L. R. A. 206, note, *Cigar Makers' Official Journal* June 1895.

⁸⁰ *Cohn v People*, 149 Ill. 486, 37 N. E. 60, 41 Am. St. Rep. 304, 23 L. R. A. 821; *State v Bishop*, 128 Mo. 373, 31 S. W. 9, 49 Am. St. Rep. 569, 29 L. R. A. 200; *State v St. Clair*, (Mo. App.) 117 S. W. 648; *Com. v Norton*, 16 Pa. Super. Ct. 423; *Com. v Norton*, 9 Pa. Dist. 132.

⁸¹ *Cigar Makers' International Union v Goldberg*, 70 N. J. L. 488, 57 Atl. 141; *Buela v Newman*, 10 Misc. (N. Y.) 460, 31 N. Y. Suppl. 449, 64 N. Y. St. 26.

⁸² *Lynch v John Single Paper Co.*, 101 N. Y. Suppl. 824.

⁸³ *State v Bishop*, 128 Mo. 373, 31 S. W. 9, 49 Am. St. Rep. 569, 29 L. R. A. 200.

an offense for any one to sell or have in his possession, any goods upon which he knows there is affixed any false or forged trade-mark, label, etc., which has been registered, that an indictment will not lie for the unauthorized use of a label adopted by the Cigar Makers' International Union of America, a voluntary association, having as its name implies, local branches not only in Indiana but in other states of the union. The view was taken that as a basis for prosecution under this statute it is essential that right to the trade-mark or label whose unauthorized use is complained of, must be exclusively vested in a citizen of Indiana, and the right to the label under consideration is shared by the Indiana members with all members outside of the state.⁸⁴ While these statutes are subject to strict construction in so far as they make violations of their provisions an offense, they should not be so construed as to thwart the evident will and intention of those who enacted them, when that intention is plainly and fairly deducible from the law itself.⁸⁵

§363. Validity of statutes designed to protect labels considered from the standpoint of constitutionality—Introductory statement.

Statutes enacted for the protection of union labels are frequently assailed on constitutional grounds, but have almost uniformly been upheld in the face of contentions that they infringe one or more of the provisions usually found in the organic law of state and federal government.

§ 364. —Deprivation of property without due process of law or denial of equal protection of laws.

Thus it has been held that statutes prohibiting the use upon goods not manufactured by union workmen, of labels declaring them to be so manufactured, does not amount to a deprivation of property without due process of law, nor does the authorization of injunctions to restrain the use of counterfeit labels amount to a denial of the equal protection of the laws.⁸⁶ It has been held, however, that a section which purports to empower the party injured by a violation of the statute to fix within the limits pre-

⁸⁴ *State v Hagen*, 6 Ind. App. 167, 33 N. E. 223.

S. W. 9, 49 Am. St. Rep. 569, 29 L. R. A. 200.

⁸⁵ *State v Bishop*, 128 Mo. 373, 31

⁸⁶ *Com. v Norton*, 9 Pa. Dist. 132.

scribed, the amount of the penalty, which in addition to full compensation for the injury suffered, shall be exacted from the offender for the use and benefit of the injured party is unconstitutional as depriving the offender of his property without due process of law. "Due process of law" with respect to the imposition of legal penalties, it was said, requires that the legislative body should prescribe the amount of the penalty or some definite standard for fixing the amount, or else that the amount should be determined in a judicial proceeding instituted against the offender.⁸⁷

§ 365. —Title of acts and unity of subject matter.

Some of the adjudications on the constitutionality of the statutes arise out of objections to the titles of the acts, as for instance that more than one subject is embraced in the act, or that its title does not sufficiently indicate its contents. In a case where the latter objection was raised, it was held that an act entitled "An act to provide for the adoption of trade-marks, labels, symbols or private stamps, by any incorporated or unincorporated association or union of workingmen and to regulate the same" and making it a misdemeanor to violate its provisions, is not unconstitutional for failure to give adequate notice of its contents; that the words used in the title are clear and intelligible enough to direct the attention of any one who contemplated using or displaying a counterfeit or imitation of a trade-mark, or label, to an examination into the provisions relating thereto.⁸⁸ So it was similarly held that the title of an act entitled "An act to protect persons, associations, and unions of workingmen, and others in their labels, trade-marks and forms of advertising," is sufficiently comprehensive to embrace relief by injunction, and damages and attorneys' fees, and does not render the statute unconstitutional on the ground that the subject is not sufficiently expressed in the title.⁸⁹ It has also been held that the title of an act entitled "An act to provide for the adoption of trade-marks, labels, symbols, or private stamps by any incorporated or un-

⁸⁷ *Cigar Makers' International Union of America v Goldberg*, 72 N. J. L. 214, 61 Atl. 457, 111 Am. St. Rep. 662, 70 L. R. A. 156, (reversing 70 N. J. L. 488, 57 Atl. 141).

⁸⁸ *Com. v Meads*, 29 Pa. Super. Ct. 321.

⁸⁹ *Beebe v Tolerton*, 117 Iowa 593, 91 N. W. 905.

incorporated association or union of workingmen and to regulate the same," is sufficient to give notice of an intent to provide a remedy for counterfeiting the label authorized by the act.⁹⁰ In respect of the first named objection it was held that a statute entitled "An act to protect associations, unions of workingmen, and persons, in their labels, trade-marks and forms of advertising" is not in violation of a constitutional provision that no act shall embrace more than one subject which shall be embraced in the title, because in addition to the provisions for the protection of trade-marks, there are also provisions relating to the punishment of imitators or counterfeiters and those using such imitations or counterfeits. The court took the ground that there may be included in an act means which are reasonably adapted to secure the objects indicated by the title without violating the constitutional provision mentioned.⁹¹ Likewise a statute the title of which is "An act for the better protection of skilled labor, and for the registration of labels, marks, names, brands or devices covering the products of such labor of associations or unions of workingmen or women," was held to contain only one subject in the title, namely, the better protection of skilled labor, by the registration of labor, etc., covering the products of such labor.⁹² And the title of an act "A further supplement to an act entitled 'An act to protect trade-marks and labels'" sufficiently expresses the object of the law—the protection of trade-marks and labels—although in fact there was no prior act entitled "An act to protect trade-marks and labels." The mere calling of an act a supplement to another designated act expresses nothing of its object, and the false assumption of the existence of a prior act, cannot mislead as to its object.⁹³

§ 366. —Local, special or private laws.

Statutes for the protection of union labels are frequently assailed as being in contravention of organic provisions against the enactment of laws variously designated as special, private or local laws. These objections have uniformly been held untenable.

⁹⁰ *Com. v Norton*, 9 Pa. Dist. 134.

⁹¹ *Cohn v People*, 149 Ill. 486, 37 N. E. 60, 41 Am. St. Rep. 304, 23 L. R. A. 821.

⁹² *Perkins v Heert*, 158 N. Y. 306, 53 N. E. 18, 70 Am. St. Rep. 483, 43

L. R. A. 858, (affirming 5 N. Y. App. Div. 335, 39 N. Y. Suppl. 223).

⁹³ *Schmalz v Wooley*, 57 N. J. Eq. 303, 41 Atl. 939, 73 Am. St. Rep. 637, 43 L. R. A. 86.

Thus in Illinois it is held that a statute "to protect associations, unions of workingmen and persons in their labels, trade-marks and forms of advertising" is not in violation of a constitutional provision against the enactment of local or special laws granting any incorporation, association or individual any special privileges, immunity or franchise. By this statute it is said "the legislature intended that any person, or any association, of whomsoever formed, or any union of workingmen, might adopt such label."⁸⁴ In Missouri it is held that a statute providing for the protection of any particular name, term, design or device adopted as a trade-mark by "any mechanic, manufacturer, association or union of workingmen, or other person," is not class legislation nor in violation of a constitutional provision inhibiting the legislature from "granting to any corporation, association or individual any special or exclusive right, privilege or immunity. It was said that a statute relating to persons or things as a class is a general law. A statute of this character does not relate to particular persons or things of a class but embraces within its provisions all associations or unions of workingmen and does not fall within the inhibition of the constitution."⁸⁵ In New Jersey the court of chancery held that a statute, entitled "An act to provide for the adoption of labels, trade-marks and forms of advertising by associations or unions of workingmen and to regulate the same," and authorizing such associations to adopt for their protection, labels and trade-marks announcing that goods manufactured by members thereof are so manufactured, is in contravention of a constitutional provision that the legislature shall not pass private, local, or special laws granting to any corporation, association or individual, any exclusive privilege, immunity or franchise whatever."⁸⁶ It was further held that the words "the same," in the title of this act cannot, for the purpose of saving the statute from the objection that it is special, be construed as referring to labels, trade-marks and forms of advertising generally and not merely to those adopted by associations or unions; that the limited class of labels, etc., mentioned in the title is the only antecedent to

⁸⁴ *Cohn v People*, 149 Ill. 486, 37 S. W. 9, 49 Am. St. Rep. 569, 29 L. N. E. 60, 41 Am. St. Rep. 304, 23 L. R. A. 200.

⁸⁶ *Schmalz v Wooley*, 56 N. J. Eq.

⁸⁵ *State v Bishop*, 128 Mo. 373, 31 649, 39 Atl. 539.

which the words "the same" can refer.⁹⁷ And a subsequent act entitled "A further supplement to an act entitled 'An act to protect trade-marks and labels,' " if considered as referring to the act in question must be deemed a supplement of such act, and restricted to associations and unions of workingmen, even though the enacting part embraces all kinds of persons; and that such latter act is therefore objectionable on the same grounds as the former.⁹⁸ On appeal, the Court of Errors and Appeals of New Jersey reversed the decision of the Chancery Court and held that the statute did not violate the constitutional provision in question. The reasoning in support of this view was as follows: "All the legislation of the statute respecting societies, associations and corporations is based upon the idea that privileges which are denied to single individuals may be conferred upon groups of persons, and nothing in the constitution was intended to subvert this doctrine. If the legislature offers to any class of persons privileges peculiarly appropriate to their class, on condition that several of them shall unite for the purpose of accepting and exercising them, the constitution will not thereby be infringed. The privileges of this act are offered to all workmen engaged in the manufacture of goods, who thus unite, and they relate to goods of every description manufactured by them. Certainly workingmen engaged in the manufacture of goods constitute a distinct class of persons, and there is a manifest appropriateness in enabling any of them who comply with the act to provide and protect a mark distinguishing the products of their labor and skill. Nor is it at all necessary that a similar privilege should be given to those who are not workingmen. Such persons stand in a different class with respect to the exercise of those faculties which the legislature intended to foster."⁹⁹ Before the decision of this case on appeal, the legislature, presumably because of the decision of the chancery court, enacted a statute "to provide for the registration of labels, trade-marks, terms and designs, and protect and secure the rights, property and interests therein, of the persons, associations, organizations and corporations adopting and filing the same." The Supreme Court of New Jersey, in a case in which the con-

⁹⁷ *Schmalz v Wooley*, 56 N. J. Eq. 649, 39 Atl. 539.

⁹⁸ *Schmalz v Wooley*, 56 N. J. Eq. 649, 39 Atl. 539,

⁹⁹ *Schmalz v Wooley*, 57 N. J. Eq. 303, 41 Atl. 939, 73 Am. St. Rep. 637, 43 L. R. A. 36.

stitutionality of the statute was assailed, without any particular grounds for attack being specified, upheld the statute, and declared that there was nothing in it in conflict with either the federal or state constitution.¹ On appeal to the Court of Errors and Appeals,² this decision was reversed for reasons having no relation to the matters considered in this section.³ The New York Court of Appeals has sustained a statute similar to the one condemned by the Chancery Court of New Jersey and upheld by the Court of Errors and Appeals of that state, and differing from those of Illinois and Missouri in that its provisions are intended only for the benefit of associations or unions of workingmen. The constitutional provisions of New York and New Jersey which these statutes are said to infringe are also the same in substance. The New York court held that a statute "for the better protection of skilled labor, and for the registration of labels, marks, names, brands, or devices, covering the products of such labor of associations or unions of workingmen or women," and providing that every such union or association who have adopted such label, etc., to designate the products of the labor of its members and filed a duplicate copy thereof in the office of the secretary of state may enjoin the manufacture, use, display, or sale of counterfeit or colorable imitations of such label, is not in violation of a constitutional provision that "the legislature shall not pass a private or local bill * * * * granting to any private corporation, association, or individual, any exclusive privilege, immunity, or franchise whatever."⁴ Here it was said "There is nothing in the title or the provisions of the act that in any manner limits its provisions to any particular locality of the state or to any designated association or union of working men or women. Instead, the provisions are all general, including every locality in the entire state, and embracing every association or union of workingmen or women existing or that may be thereafter organized. It is in no sense local or private, but is in every sense a

¹ *Cigar Makers' International Union of America v Goldberg*, 70 N. J. L. 488, 57 Atl. 141.

² *Cigar Makers' International Union of America v Goldberg*, 72 N. J. L. 214, 61 Atl. 457, 111 Am. St. Rep. 662, 70 L. R. A. 156.

³ For grounds on which this decision was reversed see *supra* this chapter, section 264.

⁴ *Perkins v Heert*, 158 N. Y. 306, 53 N. E. 18, 70 Am. St. Rep. 483, 43 L. R. A. 808, (affirming 5 N. Y. App. Div. 335, 39 N. Y. Suppl. 223).

general law.”⁶ In Pennsylvania, it is held that a statute providing that “it shall be lawful for associations and unions of workingmen, whether the same be incorporated or unincorporated, to adopt a trade-mark, label, symbol, or private stamp for their protection and for the purpose of designating the product of their particular labor or the workmanship of the member of such association and union” is not in conflict with a constitutional inhibition against passing any local or special law, or granting to any corporation, association or individual, any special or exclusive privilege or immunity.⁶

§ 367. Validity of statutes designed to protect labels considered from the standpoint of public policy.

It is competent for a state, by appropriate legislation, to protect the use of a label adopted by a labor union to show that articles to which the label is affixed were made by members of the union, and prohibit its use by persons other than members of the union, or persons who employ members thereof in the manufacture and sale of such articles.⁷ No personal rights,⁸ or principles of public policy are violated by such legislation,⁹ and this, it is said, is true, even though the legislature may have used the word “trade-mark” in the sense in which it is ordinarily understood and used by text writers and defined by judicial decisions.¹⁰ Statutes of this character are not against public policy as unjustly discriminating in favor of the labor of members of associations or unions as against that of non-union workmen.¹¹ “While private and local bills,

⁶ Perkins v Heert, 158 N. Y. 306, 53 N. E. 18, 70 Am. St. Rep. 483, 43 L. R. A. 858, (affirming 5 N. Y. App. Div. 335, 39 N. Y. Suppl. 223).

⁷ Com. v Norton, 9 Pa. Dist. 132, (citing with approval State v Bishop, 128 Mo. 373; Schmalz v Wooley, 57 N. J. Eq. 303; Perkins v Heert, 158 N. Y. 206).

⁸ State v Bishop, 128 Mo. 373, 31 S. W. 9, 49 Am. St. Rep. 569, 29 L. R. A. 200; State v Berlinsheimer, 62 Mo. App. 166; Perkins v Heert, 158 N. Y. 306, 53 N. E. 18, 70 Am. St. Rep. 483, 43 L. R. A. 858, (affirming 5 N. Y. App. Div. 335, 39 N. Y. Suppl. 223).

⁹ State v Bishop, 128 Mo. 373, 31 S. W. 9, 49 Am. St. Rep. 569, 29 L. R. A. 200.

¹⁰ State v Bishop, 128 Mo. 373, 31 S. W. 9, 49 Am. St. Rep. 569, 29 L. R. A. 200; Perkins v Heert, 158 N. Y. 306, 53 N. E. 18, 70 Am. St. Rep. 483, 43 L. R. A. 858, (affirming 5 N. Y. App. Div. 335, 39 N. Y. Suppl. 223).

¹¹ State v Bishop, 128 Mo. 373, 31 S. W. 9, 49 Am. St. Rep. 569, 29 L. R. A. 300.

¹² Perkins v Heert, 158 N. Y. 306, 53 N. E. 18, 70 Am. St. Rep. 483, 43 L. R. A. 858, (affirming 5 N. Y. App. Div. 335, 39 N. Y. Suppl. 223).

granting to a private corporation, association, or individual any exclusive privilege, immunity, or franchise whatever, are prohibited, the constitution authorizes the legislature to pass general laws under which grants may be made to corporations, associations, or individuals of an exclusive privilege, immunity, or franchise. An exclusive privilege or franchise is, therefore, authorized, if obtained under general laws. Among the exclusive privileges and franchises which have been made the subject of grants to private corporations, and with which we are all familiar, are those made by municipal governments, under the authority of general laws, of the right to occupy streets or highways for the construction and operation of street railroads. In all of these grants there is, of necessity, discriminations. Some particular corporation is singled out, to which the grant is given, and which thereafter enjoys the exclusive privilege of operating its railroad through the streets or highways specified in the grant; but, the grant being authorized, the discrimination is not unlawful. It is not contrary to public policy, for the reason that the constitution is the foundation upon which the public policy of the state is based. It embodies the policy of our government. It authorizes that which is politic, and prohibits that which is deemed inpolitic. Where, therefore, the constitution grants, or authorizes a grant through legislative action, of an exclusive privilege, it must be deemed to be in accord with the policy of the state. As we have seen, the label authorized was by a general, and not a local, act. No particular association or union has been given the exclusive privilege of adopting a label, but every association or union of every kind of working men or women is given the right to adopt its own label, which may indicate its own workmanship. It consequently follows that whatever discrimination there may be is authorized, and therefore not unjust, and that the privilege granted under the general law is in accord with public policy."¹² A contention that the passage of acts of this character are procured for the purpose of enabling union labor organizations to boycott non-union laborers and deprive them of the legitimate fruits of their labor cannot be sustained. The court will not assume that such was the purpose and intent of the legislature, or

¹² Perkins v Heert, 158 N. Y. 306, L. R. A. 858.
53 N. E. 18, 70 Am. St. Rep. 483, 43

that the labor organizations will resort to acts which are unlawful and criminal. The statutes allow the members of the union to send the product of their labors, into the markets of the country, marked in such a way as to indicate the character of their workmanship. This is a right which the law accords to every manufacturer. The court must assume therefore that the legislature, in passing statutes of this character, had in view the legitimate purpose and that it did not contemplate that the provisions thereof might be used for illegitimate purposes.¹³

§ 368. Adoption of label.

A substantial compliance with the requirements of the statutes in respect of the adoption of a label is sufficient. Where a union adopts a label "for the purpose of designating the products of the labor of the members of the various bodies affiliated with it under its jurisdiction and control," it may fairly be said to have adopted a label to designate the products of the labor of its members, in accordance with a statute authorizing it, because the members of the subordinate branches are its members.¹⁴

§ 369. Contents of label—Compliance with rules of morality and public policy.

To entitle a union label to protection, it must avoid transgressing the rules of morality and public policy.¹⁵ In connection with this rule a label of the Cigar Markers' International Union has frequently received the careful consideration of the courts. This label, which has since been modified, probably because of an unfavorable decision of the supreme court of Pennsylvania was as follows: "Issued by authority of the Cigar Makers' International Union of America. Union-made cigars. This certifies that cigars contained in this box have been made by a first-class workman, a member of the Cigar Makers' International Union of America, an organization opposed to inferior rat-shop, cooly, prison, or filthy tenement house workmanship. Therefore we recommend these cigars to all smokers throughout the world. All infringe-

¹³ Perkins v Heert, 158 N. Y. 306, 53 N. E. 18, 70 Am. St. Rep. 483, 43 L. R. A. 858.

¹⁴ Lynch v John Single Paper Co., 101 N. Y. Suppl. 824.

¹⁵ Cohn v People, 149 Ill. 486, 37 N. E. 60, 41 Am. St. Rep. 304, 23 L. R. A. 821; Hetterman v Powers, 102 Ky. 133, 43 S. W. 80, 80 Am. St. Rep. 348, 39 L. R. A. 211; Browne, Trade-marks, section 602.

ments upon this label will be punished according to law. (Seal).'' In a suit to enjoin the use of counterfeits of this label, the Supreme Court of Pennsylvania dissolved an injunction granted by the lower court and dismissed the bill. The court took the view that the object of such a label is to discriminate against the work of non-union men; to make war upon all cigar makers who do not belong to the union and to drive their work out of the market by representing it as coming from inferior rat-shops, from coolies, prisons or filthy tenement houses. In this case it was said: "A 'first-class workman' is one who does first-class work, whether his name is on the rolls of any given society or not. Filthiness and criminality of character depend on conduct, not on membership of the union. Legitimate competition rests on superiority of workmanship, and business methods, not in the use of vulgar epithets and personal denunciation. When the Cigar Makers' International union of America stigmatizes those who do not belong to it, and seeks to induce the public to discriminate against them and their work by covering them with opprobrious epithets, it is not engaged in 'promoting the mental, moral, and physical welfare of its members, but is trying to hurt and destroy those who do not choose to become members. While the courts would aid the former purpose in all ways within their power, they cannot help the latter.'"¹⁶ With the sole exception of this decision, the courts have held that the label is not opposed to the rule under consideration.¹⁷ The view taken by these decisions is that the language used in the label is not susceptible of being construed as an attack on the work done by men not members of the union.¹⁸

¹⁶ *McVey v Brendel*, 144 Pa. St. 235, 22 Atl. 912, 27 Am. St. Rep. 625, 13 L. R. A. 377.

¹⁷ *Illinois*.—*Cohn v People*, 149 Ill. 486, 37 N. E. 60, 41 Am. St. Rep. 304, 23 L. R. A. 821.

Indiana.—*States v Hagan*, 6 Ind. App. 167, 33 N. E. 223.

Kentucky.—*Hetterman v Powers*, 102 Ky. 133, 43 S. W. 80, 80 Am. St. Rep. 348, 39 L. R. A. 211.

New York.—*Perkins v Heert*, 5 N. Y. App. Div. 335, 39 N. Y. Suppl. 223, (affirmed on other grounds in

158 N. Y. 306, 53 N. E. 18, 70 Am. St. Rep. 483, 43 L. R. A. 858).

Ohio.—*Cigar Makers' Union v Linder*, 3 Ohio Dec. 244.

United States.—*Carson v Urie*, 39 Fed. 777.

¹⁸ *State v Hagen*, 6 Ind. App. 167, 33 N. E. 223; *Perkins v Heert*, 5 N. Y. App. Div. 335, 39 N. Y. Suppl. 223, (affirmed on other grounds in 158 N. Y. 306, 53 N. E. 18, 70 Am. St. Rep. 483, 43 L. R. A. 858); *Cigar Makers' Union v Lindner*, 3 Ohio Dec. Suppl. 1106, 112 N. Y. Suppl. 110.

The label attacks no other manufacturer of cigars. It says, simply, in effect, "These cigars are not the product of an inferior, rat-shop, coolie, prison or filthy tenement house workmanship."¹⁹ It does not say or purport to say that cigars made by non-union men are of the inferior class mentioned, or that cigars made by non-union men are not free from the impurity or taint to which they might be subjected by such workmanship.²⁰ It amounts to no more than that the organization is opposed to bad work because it is bad work;²¹ that cigars are upon the market which are the product of rat-shops, filthy tenements, of Chinese establishments, of prisons and tenement houses, and that it proposes to assure customers that cigars sold under this label are not the product of such establishments. It cannot be doubted "that public policy would be best served, if all manufacturers of cigars would truthfully make the like assurance to the public."²² While the label certifies that "the cigars in the box were made by a first-class workman," and "because he is a member of the union," yet in such certificate there is no criticism upon, nor condemnation of the product of any other workman. The words can be said to apply only to that of which they make some mention, union-made cigars; they cannot be said to derogate from that of which they make neither direct or indirect mention, to wit, non-union work; they are no more than a commendation of the work of the union which is perfectly lawful and proper.²³

§ 370. —Compliance with statutory requirements.

While a union becomes entitled to the privileges and protection of the statutes on a compliance with the provisions thereof,²⁴ yet the statutory requirements must be strictly complied with, or the statute cannot be invoked to obtain the protection and relief which

¹⁹ *Hetterman v Powers*, 102 Ky. 133, 43 S. W. 80, 80 Am. St. Rep. 348, 39 L. R. A. 211.

²⁰ *Cohn v People*, 140 Ill. 486, 37 N. E. 60, 41 Am. St. Rep. 304, 23 L. R. A. 821, (disapproving *McVey v Brendell*, supra); *Cigar Makers' Union v Lindner*, 3 Ohio Dec. 244, (criticising and not following *McVey v Brendell*, supra).

²¹ *Cigar Makers' Union v Lindner*, Suppl. 1106, 58 Misc. 323, (affirmed 3 Ohio Dec. 244).

²² *Cohn v People*, 140 Ill. 486, 37 N. E. 60, 41 Am. St. Rep. 304, 23 L. R. A. 821, (disapproving *McVey v Brendell*, supra).

²³ *Cigar Makers' Union v Lindner*, 3 Ohio Dec. 244.

²⁴ *Myrup v Friedman*, 110 N. Y. Suppl. 1106, 112 N. Y. Suppl. 110.

it is designed to afford against the use of counterfeits or imitations of the label.²⁵ Accordingly, if the statutes require registration of the union label in the office of the secretary of state, any prosecution for an infringement thereof must fail, unless the statutory requirement is complied with.²⁶ And if the statute provides that the label must announce that the articles to which they are attached were made by a member or members of the union adopting the label, an injunction, in accordance with its provisions will not issue to prevent the use of counterfeits or imitations of a label which does not comply with this requirement.²⁷ In two decisions it has been held that the words "union-made" on the label, does not satisfy the requirements of the statute. In these cases it was considered that the words "union-made" import that the goods were owned or manufactured or sold by the union itself, and not that they were made by members of the union,²⁸ and it has been further held that this defect could not be remedied by averment or proof that the words were used with the intention of expressing, as was understood by the public, the fact that the goods to which it was attached were made by members of the union.²⁹ On principle it is difficult to see how these decisions can be sustained. The words "union-made" import and are generally understood to mean made by members of a union. From their earliest inception down to the present time, there is no instance of a labor union as an organization engaging in and carrying on business. Such a thing is foreign to the purposes and objects of these organizations. This is a matter of common knowledge and in other courts judicial notice has been taken thereof. Why then should these words be construed as importing something which it is a matter of common knowledge has no existence in fact?

§ 371. —Misrepresentation of fact.

Lack of truth debars a trade-mark from protection,³⁰ and this would, of course, apply to union labels. On a bill to enjoin in-

²⁵ *Lawlor v Merritt*, 78 Conn. 630, 62 Atl. 639; *Com. v Meads*, 17 Pa. Dist. Rep. 485.

²⁶ *Com. v Meads*, 17 Pa. Dist. Rep. 485.

²⁷ *Lawlor v Merritt*, 79 Conn. 399, 65 Atl. 295; *Lawlor v Merritt*, 78 Conn. 630, 62 Atl. 639.

²⁸ *Lawlor v Merritt*, 79 Conn. 399, 65 Atl. 295; *Lawlor v Merritt*, 78 Conn. 630, 62 Atl. 639.

²⁹ *Lawlor v Merritt*, 79 Conn. 399, 65 Atl. 295.

³⁰ *Browne on Trade-marks*, section 711.

fringement of the label of the Cigar Makers' International Union, it was contended that the statement in the label, "made by a first-class workman," was a misrepresentation of fact; in other words, that the labels were put upon each box of cigars made by a union workman, without discrimination, and that it is not possible in the nature of things, that all the members of the union are first-class workmen. The court decided against this contention saying "This argument goes outside of the bill, and it is in the nature of a speaking demurrer. There is nothing in the bill from which it may legitimately be inferred that the statement in the label was not in point of fact, true in any particular, and there is certainly no presumption that the statement is substantially untrue, in general." ³¹

§ 372. Assignability of label.

The property right in a union label conferred by the statutes designed for their protection, may, it seems, be sold or assigned unless prohibited by such statutes.³² But it has been held that assignment is forbidden by a statute which prohibits the assignment by a union of a certificate issued to it by the secretary of state, showing it has filed a copy of a label adopted by it.³³ This statute of course, does not prevent the union from conferring a license upon some of its members or branches to use the label in a specified locality.³⁴

§ 373. Abandonment of label.

Like trade-marks, the right to union labels, may be lost by abandonment and the definite cessation of that use of the whole label, or the substantial parts of it, as a distinguishing mark or badge by which the manufactured cigars of the members of the international union are to be known and authenticated, would leave nothing for the courts to act upon, or to protect, respecting that particular label.³⁵ A union label is not abandoned, however, by the filing of an amended label, where the original and amended

³¹ Cigar Makers' Union No. 1 v Link, (Baltimore Cir. Ct. Md.) 2 L. R. A. 205, note; Cigar Makers' Official Journal Nov. 1886.

³² Lynch v John Single Paper Co., 101 N. Y. Suppl. 824. And see Browne on Trade-marks, section 57.

³³ Lynch v John Single Paper Co., 101 N. Y. Suppl. 824.

³⁴ Lynch v John Single Paper Co., 101 N. Y. Suppl. 824.

³⁵ Perkins v Heert, 5 N. Y. App. Div. 335, 39 N. Y. Suppl. 223.

labels are not distinguishable in color, form, arrangement, display of lettering, location of seal, reservation of space for the local stamp, or in the size of the lettering or of the type, and where the change made is merely of an immaterial statement, which in no way affects the character, quality, origin or ownership of the goods manufactured or sold by the members of the association.³⁶

§ 374. Suits for injunction and other relief—Parties.

Where union labels are held to be entitled to the protection of a court of equity, by injunction against infringement, suit may be brought in the name of some of the members of the union, suing in behalf of themselves and all other members,³⁷ or by some of the members of a local branch in behalf of themselves and other members of the local branch,³⁸ or in the name of the vice-president of the general union,³⁹ or in the name of the president of a local branch of the union,⁴⁰ or in the names of the president of the union and the president of a local branch thereof.⁴¹ If suit is

³⁶ *Perkins v Heert*, 5 N. Y. App. Div. 335, 39 N. Y. Suppl. 223. In this case it was said that where all that was of value, and all that was in reality appropriate to or necessary for the authentication of the product of the members of the union, was retained in the label, without change or modification in any form, there was not an abandonment in that strictly technical sense which would justify the court in saying that by cessation of use the plaintiff has no right in the original label which should be protected by the decree of the court.

³⁷ *Hetterman v Powers*, 102 Ky. 133, 34 S. W. 180, 80 Am. St. Rep. 348, 39 L. R. A. 211; *Cigar Makers' Union No. 1 of Baltimore v Link*, 25 L. R. A. 202 note; *Cigar Makers' Official Journal* Nov. 1886; *Strasser v Moonelis*, 55 N. Y. Super. Ct. 197, 11 N. Y. St. 270; *Galbreath v Phillipson*, (Dallas County Dist. Ct. Tex.) 29 L. R. A. 205; *Cigar Makers' Official Journal* April 1891.

Special statutory provisions—Ef-

fect. Under a statute providing that where the persons who might be parties are very numerous and it may be impracticable to bring them all before the court, one or more may sue for the benefit of all, some of the members of an unincorporated union may sue in behalf of all, though another statute provides that suit in behalf of an unincorporated association may be brought by the president or treasurer. The latter section is not meant to restrict the power granted by the former. *Bloete v Simon*, 19 Abb. N. Cas. N. Y. 88.

³⁸ *Renkert v Bamberger*, (Ohio Com. Pl.) 29 L. R. A. 202 note; *Cigar Makers' Official Journal* April 1887.

³⁹ *Tracy v Banker*, 170 Mass. 266, 49 N. E. 308, 39 L. R. A. 508.

⁴⁰ *Beebe v Tolerton*, 117 Iowa 593, 91 N. W. 905; *Schmalz v Wooley*, 57 N. J. Eq. 303, 41 Atl. 939, 73 Am. St. Rep. 637, 43 L. R. A. 86.

⁴¹ *Lynch v John Single Paper Co.*, 101 N. Y. Suppl. 824.

brought at the instance of a member who is engaged in manufacturing and selling on his own account goods to which the union label is attached, and who sustains special damage to his business by the use of fraudulent imitations of such label, the bill is properly brought in his name.⁴²

§ 375. —Bill.⁴³

A bill to enjoin the use of counterfeits or imitations of a union label which states the object for which plaintiff association was formed, is good without alleging that such association was a union of workingmen. The court will take judicial notice of the fact that the objects which it was formed to promote are such as naturally pertains to a union.⁴⁴

§ 376. —Defenses.

The fraudulent use of a union label before the enactment of a statute entitling the union to enjoin such use, does not deprive the union of its rights under the statute.⁴⁵ And the fact that officers of a union delayed more than two years to bring suit to enjoin the fraudulent use of counterfeits of their label, supposing that they had no remedy in equity, is not such laches as will defeat the right of action.⁴⁶ It has also been held that if the constitution of the union is, as a whole, not illegal, the fact that in some incident or particular, the purposes which it expresses are unlawful presents no defense to a suit for injunction.⁴⁷ The fact that one has no knowledge that a label on goods which he sells is a counterfeit of a union label furnishes no defense to a suit to enjoin him from selling goods to which such counterfeit label is attached.⁴⁸ But even if knowledge were essential, an injunction will be granted where after learning that the label was counterfeit, defendant delivered

⁴² See *Carson v Urie*, 39 Fed. 777.

⁴³ For forms of bills to enjoin infringement of union labels see *Appendix* forms Nos. 14, 15.

⁴⁴ *Lawlor v Merritt*, 78 Conn. 630, 63 Atl. 639.

⁴⁵ *Tracy v Banker*, 170 Mass. 266, 49 N. E. 308, 39 L. R. A. 508.

⁴⁶ *Tracy v Banker*, 170 Mass. 266, 49 N. E. 308, 39 L. R. A. 508.

⁴⁷ *Tracy v Banker*, 170 Mass. 266, 49 N. E. 308, 39 L. R. A. 508. And

see as sustaining this holding *Hudson v Bed Rock Cigar Co.* (Kansas Cir. Ct. Dist. No. 1), 29 L. R. A. 205; *Cigar Makers' Official Journal* Feb. 1889.

⁴⁸ *Maher v Iowa Fruit & Produce Co.*, (Iowa Dist. Ct. Polk County), 29 L. R. A. 204 note; *Cigar Makers' Official Journal* April 1891. To the same effect see *dictum* in *Beebe v Tolerton*, 117 Iowa 593, 91 N. W. 905.

goods bearing the counterfeit label which he had sold previously to acquiring such knowledge. On learning the character of the label he should stop delivery of the goods.⁴⁹

§ 377. —Acts enjoined.

As heretofore shown, the acts against which the statutes are designed to protect union labels are usually enumerated as the manufacture, sale, display or use of any counterfeit or imitation of the label.⁵⁰ And under statutes of this character it has been held that the fraudulent use of a genuine union label will be enjoined as well as the use of a counterfeit label; that the union is entitled to protection against one form of swindling as well as another.⁵¹ The general rule applicable to the imitation of labels is that any such imitation as may or can produce upon the mind of the purchaser of ordinary caution the impression and belief that the imitating label is that of a trade-mark owner, with whose goods he is familiar, will constitute an infringement and authorize an injunction.⁵² And where by statute the use of a colorable imitation of a union label is prohibited even though by the use of other words or names the public would not be deceived into believing that the products were union-made, an injunction will be granted to prevent the use of a label which at a casual glance resembles that of a labor union,⁵³ and the right to the injunction is not affected by the fact that there is no reason to believe that defendant sought to imitate the union label or attempted to deceive the trade.⁵⁴

§ 377a. —Costs.

Where in a suit for an injunction, defendant is shown to have used unlawfully a union label on one occasion only, which was induced by plaintiff's agent, the decree restraining defendant from violating complainant's rights will be without costs.⁵⁵

§ 378. Allowance of profits.

Under a statute authorizing the court to require payment of

⁴⁹ Beebe v Tolerton, 117 Iowa 593, 91 N. W. 905.

⁵⁰ See supra, section 362.

⁵¹ Tracy v Banker, 170 Mass. 266, 49 N. E. 308, 39 L. R. A. 508.

⁵² Cigar Makers' International Union v Burkhardt, 9 Ohio Dec. 459.

⁵³ Myrup v Friedman, 110 N. Y. Suppl. 1106, 58 Misc. 323, (affirmed in 112 N. Y. Suppl. 110).

⁵⁴ Myrup v Friedman, 110 N. Y. Suppl. 1106, 58 Misc. 323, (affirmed in 112 N. Y. Suppl. 110).

⁵⁵ United Garment Workers of America v Davis, (N. J. Eq.) 74 Atl. 306.

profits derived from the wrongful use of a counterfeit label to the person or association whose label is counterfeited, no allowance can be made in the absence of proof as to the amount of such profits. The reason is that the statute can only be upheld on the theory that these profits are either compensatory or penal in their character. If compensatory, plaintiff must show that he or the association he represents has suffered some damages. If penal, the penalty is not a fixed and definite sum, but it is subject to proof, and in the absence of evidence cannot be recovered.⁵⁶ It is also essential to a recovery of such profits that plaintiff show that defendant acted in bad faith.⁵⁷

§ 379. Criminal prosecutions.⁵⁸

On a prosecution, under a statute making it an offense to knowingly sell goods marked with a counterfeit label, it must be shown, in order to sustain a conviction, that at the time defendant sold goods so marked he knew that the label was counterfeit.⁵⁹ And the fact that two persons who were strangers to defendant told him that a box from which he was selling cigars bore a counterfeit label, is not sufficient to charge him with knowledge that such was the case, especially where neither pointed out any mark to show that the label was counterfeit or disclosed any means they possessed enabling them to know that it was such, and subsequently came back and bought cigars out of the same box without remark or objection.⁶⁰ If, however, the statute omits the word "knowingly," it seems that knowledge is not an element of the offense and need not be proved.⁶¹ So to authorize a conviction, it must appear that the goods sold were not made by members of a union. The fact that defendant knew the label was a counterfeit, does not, without more, authorize a conviction. If the goods were made by a member of the union, then the label thereon, whether genuine or counterfeit, being on the goods entitled to bear it, could not be evidentiary of a false representation of the goods of others as those of

⁵⁶ Beebe v Tolerton, 117 Iowa 593, 91 N. W. 905.

⁵⁷ Beebe v Tolerton, 117 Iowa 593, 91 N. W. 905.

⁵⁸ For forms of information for infringement of union label see *infra* Appendix forms Nos. 16, 17.

⁵⁹ Vogt v People, 59 Ill. App. 684; State v Bishop, 128 Mo. 373, 31 S. W. 9, 49 Am. St. Rep. 569, 29 L. R. A. 200.

⁶⁰ Vogt v People, 59 Ill. App. 684.

⁶¹ See Buella v Newman, 10 Misc. 460, 31 N. Y. Suppl. 449, 64 N. Y. St. 21 and cases cited.

the union.⁶² As regards registration, it has been held on a trial for counterfeiting a registered union label, that it is not necessary to prove the registration as a record where the original certificate issued by the secretary of state is made by statute *prima facie* evidence of the adoption of the label and the right to adopt it. The certificate is evidence of the fact of registration.⁶³ Nor is it a defense to a prosecution for counterfeiting a duly registered union label that the label is illegal because of objectionable matter contained in it,⁶⁴ or that defendant had no actual notice of the fact that the label was duly registered in accordance with the statutory requirement, where there is nothing in the statute requiring notice of the fact of registration to be put upon the labels registered. And this is especially true where the label counterfeited by defendant had upon it a warning that "all infringements upon this label will be punished according to law."⁶⁵ Where by arrangement between the seller and purchaser of goods shipped to the purchaser title did not pass until delivered at the place of consignment the seller may be prosecuted in the county where the purchaser lives for selling cigars with a counterfeit union label.⁶⁶ On prosecutions for violations of statutes enacted for the protection of union labels indictments or informations in the language of the statutes on which they are based are sufficient.⁶⁷ Where the indictment alleges compliance with the statutory requirements in respect of registration

⁶² State v Berlinsheimer, 62 Mo. App. 168. See also as sustaining this view Vogt v People, 59 Ill. App. 684.

⁶³ Com. v Norton, 16 Pa. Super. Ct. 423.

⁶⁴ Com. v Norton, 16 Pa. Super. Ct. 423, in which it was said that one who had robbed a corporation might as well set up that it had no *de jure* existence.

⁶⁵ Com. v Norton, 16 Pa. Super. Ct. 423.

⁶⁶ Com. v Meads, 29 Pa. Super. Ct. 321.

⁶⁷ State v Bishop, 128 Mo. 373, 31 S. W. 9, 49 Am. St. Rep. 169, 29 L. R. A. 200 (holding that on a prosecution for selling goods to which was affixed a counterfeit label of a labor

union, the indictment need not allege exclusive ownership of the label in such union where the statute on which the indictment is based makes it a misdemeanor for any person to vend goods upon which any counterfeit label shall be placed); Com. v Norton, 16 Pa. Super. Ct. 423, (holding that an indictment for counterfeiting a label of a workingmen's union is sufficient which charges the offense substantially in the language of the statute, describes the instrument which was counterfeited by the name and designation by which it was known and sets forth the fact of its registry with the secretary of state). And see State v St. Clair, (Mo. App.) 117 S. W. 648.

"by filing a description and *fac simile* thereof in said office," it may be amended so as to show the filing of "at least two *fac similes* thereof in said office" which the statute requires.⁶⁸ If it alleges in general terms, that defendant offered to sell counterfeit union labels, it is proper for the court to order that a bill of particulars be furnished to defendant, stating the times, places and to whom the defendant offered to sell counterfeit labels.⁶⁹

§ 380. Actions to recover penalties for violation of statutes for protection of union labels.

In actions to recover penalties for selling or keeping for sale goods with counterfeit union labels affixed thereto, it is not essential to a recovery to show that at the time of the sale defendant knew that the label was a counterfeit, where the statute which makes the act unlawful does not make knowledge an element of liability.⁷⁰ Nor is it necessary that the label be affixed to the goods by defendant, but it will be sufficient that it was done by the person from whom he purchased the goods and that defendant kept the goods for sale.⁷¹ Knowledge not being an element of liability under such statutes, allegations of knowledge and intent to injure in a complaint to recover a penalty for violation of the statute will be treated as surplusage.⁷²

⁶⁸ Com. v Meads, 17 Pa. Dist. Rep. 485.

⁶⁹ Com. v Meads, 17 Pa. Dist. Rep. 485.

⁷⁰ Buela v Newman, 10 Misc. 460, 31 N. Y. Suppl. 449, 64 N. Y. St.

26; Cigar Makers' International Union v Goldberg, 70 N. J. L. 488, 57 Atl. 141.

⁷¹ Buela v Newman, 10 Misc. 460, 31 N. Y. Suppl. 449, 64 N. Y. St. 26.

⁷² Buela v Newman, 10 Misc. 462, 31 N. Y. Suppl. 449, 64 N. Y. St. 26.

CHAPTER XXVIII.

SELECTION BY LABOR UNIONS OF EMPLOYER'S SERVANTS AS EXEMPTING HIM FROM LIABILITY FOR PERSONAL INJURIES CAUSED BY FELLOW SERVANTS.

§ 381. The general rule is well settled that it is the duty of an employer to his employees to exercise proper knowledge, skill, and prudence in the selection of workmen other than themselves; that he will see to it they each have proper knowledge, skill and prudence; and it is also his duty to exercise through himself or some one whom he selects to represent him, due care, knowledge and prudence in superintending the workmen as they work and see that they perform their work properly.⁷³ Nevertheless his responsibility rests upon freedom of action in the selection of the workmen and in superintendence over them. And when the individual workmen instead of allowing matters to take their usual shape and course, make it a condition of their accepting service that the employer will yield in their favor this right of freedom of action to selection and superintendence, they absolve him from responsibility which would otherwise be thrown upon him and look to that of their own selection.⁷⁴ Accordingly, when the workmen delegate to a labor organization which they have joined (and to others in privity with their organization) the right of selection and superintendence, they agree to accept the membership of their fellow-workmen in those organizations, and the actions of those associations ipso facto, as a good and sufficient guaranty to them for their individual safety and protection so far as the employer is concerned. If they deem membership in organizations as conferring benefits upon them, they cannot accept the benefits and repudiate the resulting legal disadvantages.⁷⁵

⁷³ Farmer v Kearney, 115 La. 722, 39 So. 967, 3 L. R. A. N. S. 1105.
39 So. 967, 3 L. R. A. N. S. 1105.

⁷⁵ Farmer v Kearney, 115 La. 722,

⁷⁴ Farmer v Kearney, 115 La. 722, 39 So. 967, 3 L. R. A. N. S. 1105.

APPENDIX.

FORMS OF PLEADINGS, INJUNCTIONS, AND RESTRAINING ORDERS.

FORM No. 1.—Indictment for conspiracy to extort money from employer by inducing his employes to quit his service and not to return to work until their employer has paid a sum of money which the conspirators seek to extort from him.

FORM No. 2.—Bill to enjoin boycott of manufacturer's business by the use of threats, violence, or intimidation to prevent his employes or men willing to accept employment from working for him; from picketing complainant's plant; from using intimidation, threats, etc., to prevent complainant's customers or the public from patronizing him, from preventing free access of complainant's employes to his plant and their free return to their homes, and from giving instructions to committees, associations, etc., to impede or obstruct the regular operation of complainant's business.

FORM No. 3.—Bill to enjoin striking workmen from using force, threats, or intimidation, to compel their former employer to accede to their demands, and from using these means to prevent his employers from working for him and other workmen from entering his employ.

FORM No. 4.—Bill to restrain striking workmen from picketing their former employer's place of business, and to restrain them from using violence, threats and intimidation, to prevent his employes from working for him, and other workmen from entering his service.

FORM No. 5.—Bill for restraining order and injunction to restrain strikers from picketing complainant's place of business, and from inducing the public by force or persuasion to withhold their patronage from him.

FORM No. 6.—Bill to enjoin boycott of complainant's business by picketing his plant and inducing his employes and those willing to enter his employment not to work for him, by intimidation, violence, offers of money, or of work in other places, or transportation; by calling strikes against firms to prevent them from working for complainant; from publishing complainant's firm in a list of "offices on strike"; by inducing people not to deal with complainant's employes.

FORM No. 7.—Indictment for conspiracy to boycott by threats that if customers of party boycotted failed to withhold their patronage from him, their customers would in turn be coerced into withholding patronage from them.

FORM No. 8.—Indictment for conspiracy to boycott manufacturer by preventing workmen from working for him by violence, threats, and intimidation.

FORM No. 9.—Indictment for conspiracy to procure discharge of workmen from employment and prevent him from working at his trade by violence, intimidation, threats, etc., directed against his employer and possible employers.

FORM No. 10.—Declaration in action to recover damages for procuring plaintiff's discharge from employment and preventing his obtaining employment by threats, persuasion, etc.

FORM No. 11.—Complaint based on section 7 of Sherman Anti-Trust Act to recover threefold damages for violation of act by boycott.

FORM No. 12.—Petition asking reinstatement to union, the setting aside of a fine imposed on petitioner, and for damages.

FORM No. 13.—Complaint by expelled member to compel reinstatement to membership.

FORM No. 14.—Bill to enjoin infringement of union label framed on theory that label entitled to protection though not a technical trademark.

FORM No. 15.—Bill to enjoin infringement of union label, based on special statutory provisions.

FORM No. 16.—Information for infringement of union label.

FORM No. 17.—Information for infringement of union label.

FORM No. 18.—Injunction restraining defendants from obstructing complainant's business; from maintaining pickets at or near complainant's premises; from assaulting or intimidating its employes, or those seeking employment from it to prevent them from working for complainant; from following employes to their homes to induce them to leave the employment or to molest or intimidate their families; from paying money to employes to induce them to leave their employment; from organizing a boycott against complainant or its employes and using threats of injury to the business of persons dealing with complainant or his employes; and from sending communications to customers or other persons to dissuade them from dealing with complainant.

FORM No. 19.—Injunction restraining defendants from entering on complainant's premises to obstruct its business; from using force, violence, or intimidation, to compel its employes to refuse to perform their duties, or to quit complainant's service or to prevent other workmen from entering its service, or other persons from going upon the premises for any lawful purpose; from congregating at or near the premises with intent to intimidate its employes and to prevent them from rendering their services, or to cause them to leave the service or to prevent others from entering the service; from going to the homes of the employes to coerce them to leave their employment or to intimidate their wives and families.

FORM No. 20.—Injunction restraining defendants from obstructing complainant's business in any manner; from using violence or intimidation to cause his employes to quit his service and others willing to enter his service from doing so; from congregating at or near complainant's premises to prevent complainant's employes from rendering their services; from molesting in any manner employes of complainant or those seeking employment from him; and from picketing the streets or approaches to complainant's premises for the purpose of intimidating his employes or those seeking employment from him.

FORM No. 21.—Temporary injunction to restrain picketing for the purposes of persuading or otherwise preventing complainant's employes from working for him, or to break their contracts with him, or to induce other workmen not to enter his service.

FORM No. 22.—Temporary injunction restraining union, its officers, and others as members and individuals from interfering with the operation of complainant railroad company by trespassing on its premises, by use of threats, violence, intimidation and persuasion, to induce its employes to fail to perform their duties, or to quit the service, and to prevent others from accepting employment from complainant; from picketing its trains; or the approaches to its property, or the homes of its employes for the purpose of inducing by violence, threats, intimidation, or persuasion, its employes not to perform their duties or to quit the service, or other workmen not to enter the service.

FORM No. 23.—Final injunction restraining defendants from using threats, violence, or intimidation, to prevent complainant's employes from working for him and others from entering his service; from unlawful picketing of complainant's place of business or the approaches thereto, or his employes' residences, and from threatening or intimidating the wives and families of complainant's employes.

FORM No. 24.—Temporary injunction restraining defendants from using threats, violence, or intimidation, to prevent complainant's employes and others willing to enter his service from working for him; from picketing his premises or other places with intent to unlawfully interfere with his employes or unlawfully obstruct his business; from interfering with free access of his employes to his place of business, or with their free return to their homes; and from intimidating or boycotting by distribution of circulars, etc., or otherwise threatening complainant's employes, customers, or the public, to cause them to refuse to do business with complainant.

FORM No. 25.—Injunction to restrain defendants from boycotting complainant's business, or that of any other person in order to prevent or injure the regular operation of complainant's business or the transportation or sale of their manufactures; from publishing or circulating statements written or oral calling the attention of their customers or the public to any boycott or strike against complainants; from publishing or circulating statements written or oral that complainants are unfair; from coercing or attempting to coerce any dealer or the public not to buy, wear, or deal in goods manufactured by complainants; and from threatening injury to the business of any person or firm who should deal in such goods.

FORM No. 26.—Restraining order to prevent defendants from collecting in crowds at or near complainant's premises; from entering on his premises; from annoying or intimidating his employes or obstructing their free passage to and from his premises; from using force, violence, intimidation or annoying language, to cause his employes to quit his service, and other workmen not to enter his employment; from using money in furtherance of the purpose of inducing his employes not to work for him; from picketing his premises with intent to use intimidation, or threats against his employes going to and from their work; and from intimidating the wives and families of the employes at their homes.

FORM No. 27.—Restraining order to prevent defendants from inducing complainant's employes to break their contracts of service; from coercing workmen not to enter his service; from personal molestation and annoyance of

persons employed or willing to be employed by complainant; from using violence and intimidation against such persons to prevent them from working for complainant; and from picketing the streets near complainant's premises for the purposes mentioned.

FORM No. 28.—Injunction restraining defendants from carrying out a boycott of complainant's business by causing others by means of threats and intimidation to withhold from complainant work which they might otherwise have given him, or to compel him to stop work commenced by him; from publishing or circulating any matter which would tend to injure the business of any one for whom complainant has done, is now, or will hereafter do work and from in any way hindering plaintiff by interfering with his business or customers.

FORM No. 29.—Injunction restraining defendants from conspiring to prevent or hinder the carrying on of complainant's business; from using force, violence, or intimidation, to induce complainant's employes to refuse to perform their duties, or to quit their employment, or to induce other workmen not to enter its service; from congregating at or near its premises or elsewhere with intent to use such means to accomplish such end or to prevent its employes from reaching their place of work, or returning to their homes; from going to the homes of such employes to intimidate them and cause them to quit their employment; from preventing complainant from delivering its product, or other persons from delivering materials to it; from picketing its premises to prevent employes or those seeking employment from going there; from preventing by threats of strike or boycott any persons from dealing with it, and from calling a strike against any person because he deals with complainant.

FORM No. 30.—Injunction restraining defendants from using force, violence, intimidation, opprobrious epithets or ridicule, to prevent complainant's employes from remaining in his service, and other workmen from entering his service; from calling "Scab" at workmen going to and from his premises; from picketing or loitering upon his premises; from congregating about such premises or at other places, or boarding trains to prevent workmen in his employ, or willing to enter his service from working for it by intimidation, threats or undue pressure, and from in any manner, obstructing the regular operation of his business.

FORM No. 31.—Injunction restraining labor union, its officers and members from threatening injury to the business of plaintiff's customers or prospective customers if they patronize them; from sending out circulars stating that plaintiffs are under the ban of the union, and that its members will not handle or work building materials from his mills; from imposing or threatening to impose penalties on members to prevent them from handling or working building materials purchased from plaintiffs; and from issuing union labels to other mill owners within the jurisdiction of the union, and vicinity for the purpose of interfering with plaintiff's business.

FORM No. 32.—Injunction against interference with the transportation of interstate commerce.

FORM No. 33.—Injunction against interference with the transportation of interstate commerce and the mails.

FORM No. 34.—Injunction restraining a conspiracy to procure the discharge of complainants from employment and to prevent their obtaining other employment by threats of injury to the business of their employers or possible employers.

Form No. 1.—*Indictment for conspiracy to exort money from employer by inducing his employes to quit his service and not return to work until their employer has paid a sum of money which the conspirators seek to exort from him.*

“The grand jurors of the state of Missouri within and for the body of the city of St. Louis, now here in court, duly impaneled, sworn and charged, upon their oath present, that one William Burke, on the 21st day of April, nineteen hundred and five, was a plumber and plumbing contractor in the city of St. Louis, engaged in the business of general plumbing and a contracting work, and doing plumbing work on contract, and then and there had contracts to do a large amount of plumbing work in and about certain buildings, to wit, one building at Number 5013 and 5015 Delmar avenue, and one building at 4139 Maffitt avenue, both in said city of St. Louis, then and there being constructed, and that in and about said business of doing said contract work and executing said contract, he, the said William Burke, employed and then and there had in his employ two journeymen plumbers, to wit, Charles Lambert and Cornelius L. Crowley. And that on or about the said twenty-first day of April, nineteen hundred and five Charles J. Dalton and Franklin C. Fay, intending unlawfully, fraudulently, and deceitfully to exort, obtain and procure of and from the said William Burke, a large sum of money for the use of themselves and others, whose names are to these grand jurors unknown, and in order to exort, obtain and procure said large sum of money, did, at the city of St. Louis, unlawfully and corruptly conspire to cause, procure and induce the said journeymen plumbers, who were then and there in the employ of said William Burke, in and about the execution and performance of the aforesaid contracts, and to thereby hinder and delay the said William Burke in and about the execution and performance of said contracts. And that the said Charles J. Dalton and Franklin C. Fay, in furtherance of their conspiracy aforesaid, on the said twenty-first day of April, 1905, at the city of St. Louis aforesaid, did corruptly and unlaw-

fully induce the said journeymen plumbers so employed by the said William Burke as aforesaid, to quit the employment of the said William Burke in the execution of said contract aforesaid, and then and there did, in the furtherance of their conspiracy, state and represent to the said William Burke, that unless he, the said William Burke would then and there pay to them, the said Charles J. Dalton and Franklin C. Fay, the sum of two hundred (\$200.00) dollars, lawful money of the United States for the use of themselves and said others, then the said Charles J. Dalton and Franklin C. C. Fay would prevent the said journeymen plumbers from again resuming the employment of the said William Burke; and the said Charles J. Dalton and Franklin C. Fay, in furtherance of their said conspiracy, then and there did corruptly, wickedly and willfully, obtain for the use of themselves and said others, from the said William Burke the sum of two hundred (\$200.00) dollars lawful money of the United States of the property of him, the said William Burke, against the peace and dignity of the state. And the said Grand Jury aforesaid, upon their oath, aforesaid, do further present that one, William Burke, on the 21st day of April, nineteen hundred and five, was a plumber and plumbing contractor, in the city of St. Louis, engaged in the business of general plumbing and contracting work, and doing plumbing work on contract, and then and there had contracts to a large amount of plumbing work in and about certain buildings, to wit, one building at Numbers 5013 and 5015 Delmar avenue, both in said city of St. Louis, then and there being constructed, and that in and about his business of doing said contract work the said William Burke had and employed two (2) journeymen plumbers, to wit, Charles Lambert and Cornelius L. Crowley, and that on said twenty-first day of April, nineteen hundred and five, at the said city of St. Louis, the said journeymen plumbers then in the employ of the said William Burke, in and about the work of executing the aforesaid contract did stop and quit the employment of the said William Burke; and that on the said twenty-first day of April, nineteen hundred and five, one Charles J. Dalton, and Franklin C. Fay, well knowing the premises, and that said journeymen plumbers of said William Burke, had stopped and quit the employment of said William Burke, as aforesaid, and intending unlawfully, fraudulently and deceitfully to extort, obtain and procure of and from the said William Burke a large sum of money for the use of

themselves and others whose names were to these grand jurors unknown, on the said twenty-first day of April, nineteen hundred and five, at the city of St. Louis, aforesaid, did corruptly and unlawfully conspire together to extort, obtain and procure from and of the said William Burke a large sum of money for the use of themselves and said others, to wit, the sum of two hundred (\$200.00) dollars, and in order to extort, obtain and procure the same, did in furtherance of their said conspiracy represent and state to the said William Burke, that they, the said Charles J. Dalton and Franklin C. Fay, would then and there cause and induce the said journeymen plumbers who had quit the employment of the said William Burke, as aforesaid, not to return to the employment of the said William Burke, and not to resume the work of the said William Burke, in and about the erection of said contract, and that they, the said Charles J. Dalton and Franklin C. Fay, would, by the means aforesaid, prevent and hinder him, the said William Burke, in the execution and completion of the said contract, unless he, the said William Burke would then and there pay to them, the said Charles J. Burke and Franklin C. Fay, the sum of two hundred (\$200.00) dollars; and the said Charles J. Dalton and Franklin C. Fay then and there, in furtherance of said conspiracy, by the means aforesaid, unlawfully, fraudulently and deceitfully did obtain and have of and from him, the said William Burke, two hundred (\$200.00) dollars lawful money of the United States, all the money and property to him, the said William Burke; against the peace and dignity of the state.”¹

Form No. 2.—*Bill to enjoin boycott of manufacturer's business, by the use of threats, violence or intimidation to prevent his employes or men willing to accept employment from working for him; from picketing complainant's plant; from using intimidation, threats, etc., to prevent complainant's customers or the public from patronizing him; from preventing free access of complainant's employes to his plant and their free return to their homes, and from giving instructions to committees, associations, etc. to impede or obstruct the regular operation of complainant's business.*

“(1) Complainants are partners doing business in the city of Detroit, under the name of Jacob Beck & Sons, having their mill

¹ State v Dalton, 134 Mo. App. 146, 114 S. W. 1132, 1134, 1135.

and place of business at 245, 247, 249, and 251 West Congress street. At their place of business, on West Congress street, aforesaid, they carry on a general milling business, namely, of manufacturing and milling cereal products. They also deal in oats, grain, meal, and other cereals, and have had for years a large trade established in the city of Detroit and elsewhere. In carrying on such business they always use a number of horses, trucks and wagons for use in trucking and carrying from the elevators, the cars, and elsewhere the different cereals which they use in the process of manufacture and sale, and also in delivering said cereals, either manufactured or unmanufactured, to the elevators, cars, and other customers in the city of Detroit and elsewhere.

“(2) Complainants have built up and established a large and valuable city trade, and have a large number of regular customers throughout the city, who buy almost daily of complainants some of their products, sometimes sending their own wagons and teams for the merchandise so purchased, and at other times relying on complainants to deliver the same. The trade so built up they have had, until very recently, for a number of years, and is to quite a large extent a cash trade and a valuable one.

“(3) Complainants further aver that in July, 1897, they had in their employ five teamsters, named Michael Walpole, H. McHugh, C. Fox, W. Pfoff, and Edward Hupp. These teamsters had been in the employ of the complainants for some time. Early in July, 1897, the above-named teamsters came to the office of complainants, and requested that they be paid higher wages. Complainants, in answer to such request, asked the said teamsters how much they wanted to which they replied that they wanted \$9 a week for single wagons, and \$10.50 for double wagons. Thereupon complainant George Beck asked said Walpole, McHugh and others, last named, whether they would be satisfied if they were given those wages; whereupon said Walpole replied, in effect, as follows: “The wages do not cut any figure, but it is the scale we want you to sign.” Said Walpole and others were then told that they could have a reply that same evening, said conversation being in the morning. In the evening of the same day shortly after six o’clock, said Walpole, McHugh, and others came with another person, whom they said was the delegate of the Railway Teamsters’ Protective Union. They were asked what was meant by the scale which they demanded should be signed, whereupon they produced

a written agreement which they had already prepared. A copy of this agreement is hereto attached, and made a part of this bill. Complainants not having examined said written agreement called the 'Scale,' it was agreed that the complainants should have a week to examine and consider the same. Subsequently complainants examined the agreement, and on or about the 1st day of August informed the executive committee of the Railway Teamsters' Protective Union, who seemed to have the matter in charge, and particularly one George Innis, representing said union, that they (the complainants) had decided not to sign the scale, and refused to sign the same. In the meantime complainants' horses had all been sent to their farm in the country, near Plymouth, and all of the trucking and teaming of the business of complainants had been turned over temporarily to the Shedden Cartage Company, Limited, and to Ferguson & Co. At the time said executive committee called, being on or about the 1st of August, complainants informed them of the last named facts; also that they, the complainants, would bring their teams back from the farm in the fall, and that they would inform them when their teams would be put at work again. About the time that the complainants' teams were sent out into the country, and having no further use then for said teamsters Walpole, McHugh, Fox, Pfoff, and Hupp, they were so notified and quit working for complainants. In the meantime the said Walpole, McHugh, Fox, Pfoff, and Hupp, as complainants are informed and believe, and so allege, had joined the association called the Railway Teamsters' Protective Union. Some time after they had been discharged, and after they had joined said union, said Walpole, Pfoff, and Hupp came to complainants, and informed them that they had been out of employment ever since they had left the employment of complainants, represented that they were without means to support their families, and that their families were in want; and thereupon complainants, although their teams were still in the country and having no use for their teamsters, employed said Walpole, Pfoff, and Hupp for work in their mill as extra men. They continued to employ said men in their mill until October 25, 1897. At the time said men returned to the complainant's employ they informed complainants they had withdrawn from the Railway Teamsters' Protective Union.

“(4) Complainants further allege that on Saturday, October 23, 1897, they informed George Innis, a resident of Detroit, who be-

longs to the Railway Teamsters' Protective Union, and who is the walking delegate of the Railway Teamsters' Protective Union, that they intended putting on their own teams again on Monday, October 25th, and the three men who went out and joined their union, namely, Walpole, Pfoff, and Hupp, before mentioned, would on the 25th day of October again start driving for complainants. Complainants so informed Innis simply because they had agreed to so inform him, and as he represented the Railway Teamsters' Protective Union. Complainants further allege that on the morning of the 27th of October said George Innis, with a large number of others, whom said Innis represented belonged to the Railway Teamsters' Protective Union, and were members of committees thereof, numbering in all from fifteen to twenty, appeared in the street in front of the mill of said complainants, on Congress street. Your orators are unable at the time of filing this bill to ascertain the names of all the parties who accompanied said Innis, but they were informed by said Innis, and also by a number of the other men, that they belonged to the Railway Teamsters' Protective Union, and they were also then informed by said Innis that the purpose of said Innis and his associates there, and the purpose of said Railway Teamsters' Protective Union, was, by threat and by organized effort and by boycotting, to prevent and persuade and compel people from having any business relations or dealings with the said complainants, Jacob Beck & Sons, and to prevent, if possible, any teams of customers from visiting complainants' mill and place of business and also to prevent any teamsters continuing in or entering the employment of said Jacob Beck & Sons until said Jacob Beck & Sons had signed the 'Scale' heretofore referred to. And your orators allege and charge that said George Innis, as walking or traveling delegate or representative of the Railway Teamsters' Protective Union, and the Railway Teamsters' Protective Union, acting through its representatives and members, and its committees or walking delegates, so called, are unlawfully and wrongfully combining and confederating together to prevent, by intimidation and threats, all persons from patronizing complainants, or buying merchandise from them, or visiting their mill premises for business purposes; and that the said Railway Teamsters' Protective Union, the said George Innis, and his associates and confederates, whose names are at this moment unknown to these complainants, began, and have since constantly pursued, a course of threats and intima-

tion and persuasion for the purpose, by means of such intimidation and threats and fear, not only to prevent customers from buying of complainants, but also to intimidate and prevent the employes of complainants from continuing in their employ, and from peaceably or otherwise pursuing their work in complainants' mill. And your orators show that the said George Innis, the said Railway Teamsters' Protective Union, and its members, and also the members of the Detroit Council of Trades and Labor Unions, hereinafter mentioned, have intruded into the mill premises and buildings where the men employed by your orators were at work, and have solicited men who were peaceably pursuing their avocations, and who were satisfied to remain in the employment of your orators, and also have threatened and attempted to intimidate them to quit the employment of your orators, with the purpose and intent, as your orators charge, of preventing your orators from continuing their said business, and thus to force your orators to submit to the terms proposed in said scale. That said solicitation of the employes of your orators, and said intrusion into the places where said men were at work, and into the mill of your orators, constituted an unlawful interference with the business of your orators, and that the persons who have been soliciting the employes of your orators, and who have been guilty of such intrusion and interference with the business of your orators, are, with few exceptions, unknown to your orators.

“(5) Your orators further allege that about eleven o'clock, on the 27th day of October, John Strigel, who your orators allege is president of the executive board of the Detroit Council of Trades and Labor Unions, and William Campbell, who complainants understand is a patternmaker, and W. Goar, who complainants understand is a machinist, all officers of the Detroit Council of Trades and Labor Unions or of the Railway Teamsters' Protective Union, came to the office of complainants, and after a few minutes' discussion they were told that the complainants would not sign their scale nor their agreement, and would insist upon their right to continue to carry on their work and their business in their own way, so long as the same was done legally, and that they would continue to carry on their work with their own teams and teamsters; that they were paying their teamsters all that said teamsters asked or demanded; that said teamsters were satisfied with their work and with their employment, and were not complaining.

Thereupon, and after said complainants had so informed the last-named defendants, to wit, said Strigel, Campbell, and Goar, said Campbell gave complainants to understand and notified complainants that they, the said Detroit Council of Trades and Labor Unions and the Railway Teamsters' Protective Union, their officers and members, would ruin the business of Jacob Beck & Sons. They further stated that they had already financially ruined a cooper in the city of Detroit, who a few years ago was worth \$50,000, and who would not pay or join their union, that they had boycotted him, and they had ruined him by said boycott, and that he had been compelled to mortgage his property. This statement was so made, as complainants allege, for the purpose of intimidating, and by such intimidation compelling complainants to sign what is known as the 'Scale;' and complainants allege at this time there was no one in their employ, either teamster or laborer, who was asking any raise in their wages, and that, so far as complainants know, all of their employes were satisfied with the terms of their employment, and are still.

“(6) And your orators show that the Railway Teamsters' Protective Union is an organization existing in this state, and other states, having in this state, in the city of Detroit, a local subdivision called the Railway Teamsters' Protective Union No. 5,872; that such organizations are voluntary associations, whose proceedings are secret. Your orators allege that the present officers of the Railway Teamsters' Protective Union are as follows: President, William Thoms; secretary, Robert B. Camp; and that George Innis, the person referred to in this bill, is the traveling delegate of said Railway Teamsters' Protective Union. Your orators further show that the Detroit Council of Trades and Labor Unions is the Detroit branch of a national association, and that its officers are John Davidson, president; Herbert Greville, vice president; Alex H. Smith, recording and corresponding secretary; John Strigel, financial secretary; and Jeremiah Sullivan, treasurer. That the proceedings of said Detroit Council of Trades and Labor Unions are, as your orator George Beck is informed, secret. Said association or organization is, through its officers and members, co-operating and combining with and assisting said Railway Teamsters' Protective Union in their efforts, by threats and intimidation, to compel your orators to sign the scale aforesaid, and also to prevent employes not members of said Railway Teamsters' Protective Union

to continue in the employment of said complainants, and also to boycott and interfere with and ruin the business of your orators, by driving away their trade, and by means aforesaid compelling the public not to deal with or patronize your orators.

“(7) And your orators allege that the persons who have been so congregating and loitering in front of, and in the neighborhood of, complainants’ premises, and so soliciting the employes of complainants, and who are so guilty of other threats and acts of intimidation, as herein alleged, and who are guilty of such intrusion and interference of the business of said complainants, are, with few exceptions, unknown to your orators, and are too numerous for your orators to make them parties to this bill of complaint; but your orators aver and show that all of said Railway Teamsters’ Protective Union, and all of the members of said Detroit Council of Trades and Labor Unions, in so far as said organizations and practices are unlawful and against the legal rights of your orators, are in combination and are associated together in an unlawful enterprise, and that your orators shall not be obliged to make all of said members of said associations who may from time to time be guilty of such interference of the business of your orators parties to this bill of complaint, but that your orators should be permitted to proceed against the representatives of said Railway Teamsters’ Protective Union and said Detroit Council of Trades and Labor Unions, to wit, the walking delegates, officers, strike committees, and such other members of such unions who may be known to your orators, or whose names may be ascertained from time to time, and who are guilty of the unlawful practices herein alleged. Your orator George Beck states that he has made personal inquiries of said Innis, and in the presence of a large crowd of others who are associated with him for the purposes herein named, to ascertain the names of the other persons, whose names are not herein alleged, and that he was refused such information.

“(8) And as showing the purpose of the Detroit Council of Trades and Labor Unions, and said Railway Teamsters’ Protective Union, said George Innis and others, members or officers of said unions, who are all combining together for the purpose of ruining the complainants’ business, they state: On the evening of October 27, 1897, B. B. Allen, a customer of complainants, sent his team to their mill. Said team was driven by one Joseph Grindell. The driver stopped his team in front of complainants’ mill and immedi-

ately a large crowd of men, headed by said Innis, surrounded said Grindell, and endeavored, by threats and intimidation and persuasion, to induce him to go away without patronizing the complainants, and without getting what he came to their mill for. They did induce said Grindell to go to a telephone for the purpose of informing his employer what the demands of said Innis and others were, but said Grindell returned to the complainants' mill subsequently, and took his load of oats. On the same day, to wit, October 27th, said George Innis informed Roundsman Walpole that up to that hour, five o'clock, he, the said Innis, had stopped fifteen teams from going into the place of business of Jacob Beck & Sons, all of which said teams complainants allege were going there for the purpose of making purchases and doing business with complainants; and complainants further allege that heretofore their local cash daily sales have been about \$100, that on the 26th day of October they were \$99.04 and that on the 27th day of October, the day when said Innis claimed that he and his associates, confederating and conspiring and combining together to ruin complainants' business, had stopped the fifteen teams, such transient sales were only \$33.44, showing a large loss to complainants, arising solely, as complainants allege, through the conduct of said Innis, said Railway Teamsters' Protective Union, and the Detroit Council of Trades and Labor Unions, and the followers of said Innis, and members and officers of said organizations.

“(9) Complainants further allege that about 3.30 on the 28th of October, 1897, one Alex. McIsaac, doing business at 1146 Grand River avenue, called at complainants' mill for feed, being a regular customer of complainants, and that said McIsaac was stopped in front of the entrance to the mill by said Innis and his followers, said Innis being apparently the ringleader, and was strongly urged and persuaded not to buy any goods from Jacob Beck & Sons; that, in addition to persuasion, said Innis and his followers used threatening words, and used threats, and almost violence, and that such language used was so strong that Roundsman Walpole, who was present to protect complainants' property, ordered the crowd to leave the man and team alone, and in this way only was said McIsaac free to patronize said complainants. And your orators further charge, on information and belief, that the above are not the only instances where said Innis and his associates have at-

tempted, by threats of boycott and intimidation, to drive away the customers of your orators, but that said Innis and his associates have visited a large number of customers of complainants for this purpose, and have threatened them with boycott, and with injury to their business, in case they continued to trade with said complainants, and have distributed to them boycott circulars similar to those herein set forth.

“(10) And your orators further show that on the 28th day of October, 1897, and also on the 29th day of October, there appeared in front of complainants' mill said Innis and divers and sundry other persons, members of said union, at least fifteen in number, who are their associates and confederates, and from early morning until late at night constantly hung and loitered about complainants' mill, at the place aforesaid, and upon the streets in close proximity, for the purpose of picketing the premises of complainants, and preventing complainants' customers from entering complainants' premises, and that one of the means of doing this was by the distribution of a boycott circular. One of said circulars is hereto attached. Circulars similar to the one attached were distributed by said Innis and his confederates and associates, representing themselves to complainants to be members of the Detroit Council of Trades and Labor Unions and the Railway Teamsters' Protective Union, to almost every team or person who entered or passed the mill of complainants and to customers of complainants. Complainant George Beck personally saw a large number of these circulars distributed to customers of his firm, and complainants allege that when these circulars were delivered to their customers, many of whom were grocers and feed dealers, in different parts of the city, they were accompanied by a threat from said Innis and his associates, confederating together, that, if the customer continued to trade with Jacob Beck & Sons his, the customer's trade would be ruined. And complainants allege that the distribution of these boycott circulars was continued on the 29th of October, and is being continued by said Railway Teamsters' Protective Union, Detroit Council of Trades and Labor Unions, and their officers and members, and George Innis, and others, before mentioned, and that the distribution of these boycott circulars is calculated to and will injure or ruin the business of the complainants, and that they are being distributed for this purpose, and as one of the means of carrying out the threat made by said Innis and his associates that they

would ruin the complainants' business before they had finished with them. And complainants allege, in reference to the statements made in said circular, that they have never entered into an agreement with the Railway Teamsters' Protective Union or the Detroit Council of Trades and Labor Unions in July, 1897, that they would employ none but union men thereafter, and complainants deny that they have discharged any union men and hired non-union men in their places, but on the contrary, state that the teamsters who left their employ and joined the union were not discharged because they were union men, but subsequently left said Railway Teamsters' Protective Union, as complainants are informed, and returned to work for complainants, and said Walpole, Pfoff, and Hupp are now working for complainants.

“(11) Your orators further charge that the said Detroit Council of Trades and Labor Unions, and the said Railway Teamsters' Protective Union, said George Innis, and the officers, committees, and walking delegates of said organizations, have and are still willfully and maliciously combining together in intimidating and threatening persons in the employ of the complainants from remaining in their employ, and that they have threatened several of complainants' employes, particularly said Pfoff, with personal violence, if he continued to remain in complainants' employ, and they allege and charge that the Detroit Council of Trades and Labor Unions, and said Railway Teamsters' Protective Union, George Innis, John Strigel, William Campbell, William Goar, John Dernberger, James Cochrane, Frank Ladd, William Singleton, Herbert Sheldon, George Wilson, Sanford S. Diamond, J. W. Morris, and Charles Fox, their agents, servants, confederates, and the committees, members, officers, and walking delegates of said Detroit Council of Trades and Labor Unions and Railway Teamsters' Protective Union, have conspired and combined, and are conspiring and combining to boycott complainants and their business by means of the circular aforesaid, by intimidation of customers, by visiting customers of complainants at their places of business, and threatening them with boycott in case they continued to trade with complainants, by gathering in threatening crowds in front of and in the neighborhood of complainants' place of business, by threatening with violence employes of complainants, by the distribution of circulars, etc., and generally injuring complainants in their said business, and preventing them from carrying on the same, and that their acts in the premises

have required the attendance of several policemen constantly for the last three or four days in order to prevent violence, and to enable complainants in any manner to use their wagons and carry on their business; and they allege and charge that said parties last named, and said members of said associations, if allowed to continue the acts which they are now committing, or allowed to gather in threatening crowds in front of complainants' mill or allowed to interfere, as they have, with complainants' customers and employes, that the business carried on by the complainants, which is a large one, and the good will of which is of large value, will be seriously injured, if not ruined.

“(12) And complainants allege that they are entirely without remedy at law, and can only be fully protected and relieved in a court of equity.”

The prayer of the bill is that defendants be enjoined:

“(1) From in any manner interfering with the employes of the complainants now in the employ of your orators, and from in any manner interfering with any person who may desire to enter the employ of your orators, by the way of threats, personal violence, intimidation, or other means calculated or intended to prevent such persons from entering or continuing in the employment of your orators, or calculated or intended to induce any such person or persons to leave the employment of your orators.

“(2) From boycotting your orators, either by the distribution of circulars or handbills or otherwise.

“(3) From interfering, intimidating, boycotting, molesting, or threatening in any manner the customers of your orators, or any other person or persons, with the purpose of inducing such person or persons not to deal with or do business with your orators.

“(4) From congregating or loitering about or in the neighborhood of the premises of your orators, or at other places, with intent to interfere with the employes of your orators or with the prosecution of their work, or to interfere with or intimidate the employes of your orators, with intent to cause them to leave the employment of your orators, or to interfere with or obstruct in any manner the business or trade of your orators, and to prevent or induce the public not to trade with or deal with your orators.

“(5) From interfering with the free access of employes of your orators to your orators' premises, and their places of work, and the

free return of said employes to their places of business or their homes.

“(6) From impeding, obstructing, or interfering with, by boycott, threat or otherwise, the trade or customers of your orators, with the purpose of inducing them not to patronize or deal with your orators.

“(7) From giving any directions or orders to committees, associations, or otherwise, for the performance of any such acts or threats hereinbefore enjoined, and from in any manner whatsoever impeding, obstructing, or interfering with the regular operation and conduct of the business of your orators.

“(8) And for such other and further relief as shall be deemed equitable.”²

Form No. 3.—*Bill to enjoin striking workmen from using force threats or intimidation, to compel their former employer to accede to their demands, and from using these means to prevent his employes from working for him, and other workmen from entering his employ.*

“First. Your orator is a corporation duly organized and existing under the laws of the state of Michigan, and having its principal office for the conduct of its business in the city of Detroit, in said county and state. It is engaged in the manufacture of boilers for heating purposes, and has a manufacturing plant in said city of Detroit, at number 251 Campbell avenue; and said plant represents an investment of upwards of fifty thousand dollars, and requires the use of upwards of one hundred thousand dollars of working capital. In the conduct of its said business it employs about one hundred persons as molders, machinists, pattern makers, core makers, apprentices, and laborers.

“Second. That prior to the 17th day of April, 1901, it had in its employ as molders and apprentices some twenty-five to thirty men, among whom were the defendants Fritz Zampich, Edward Troeder, George Hoffman, Michael Schulz, Michael Murphy, Herman Karnarsky and Henry Smithers; that on said last-mentioned day said last-named defendants were union men, and members of the defendant Iron Molders' Union of North America, and the two local branches herein named, and the other sixteen or seven-

² Beck v Railway Teamsters' Protective Union, 118 Mich. 497, 77 N. W. 13, 74 Am. St. Rep. 44, 42 L. R. A. 407.

teen molders then in the employ of your orator were non-union men, or men not members of said defendant association, or either of its said branches.

“Third. Your orator further shows that it is advised and believes, and so charges the fact to be, that said defendant Iron Molders’ Union of North America is a voluntary association, and is generally known and spoken of as a ‘trade union,’ and the defendants Local Branch No. 31 of the Iron Molders’ Union of North America and Local Branch No. 244 of the Iron Molders’ Union of North America are branches of said Iron Molders’ Union of North America, which is in existence in the state of Michigan, and others of the United States. The names of the officers of said defendant Iron Molders’ Union of North America are, as your orator is advised and believes, Martin Fox, president; Joseph F. Valentine, first vice-president; M. J. Keogh, second vice-president; James E. Roach, third vice-president; and D. J. Denney, secretary. The officers of Local Union No. 244 of the Iron Molders’ Union of North America are, as your orator is advised and believes, William Randall, president; Alfred Ensor, financial secretary; and Henry Nex, recording secretary; and the officers of Local Union No. 31 of the Iron Molders’ Union of North America are, as your orator is advised and believes, George Robarge, president; John M. Sims, financial secretary; and Thomas O’Neil, recording secretary.

“Fourth. Your orator further shows that on or about the 1st day of April, 1901, said James E. Roach, third vice-president of said defendant Iron Molders’ Union of North America, called on your orator at its place of business, and wanted your orator to ‘unionize’ its shop, or, in other words, to induce all the molders then in its employ to become members of said defendant Iron Molders’ Union of North America, and told your orator that by so doing your orator would avoid trouble, but your orator declined to accede to the request of said Roach.

“Fifth. Your orator further shows that afterwards, and sometime prior to the 17th day of April, 1901, your orator employed as a molder one ———, a non-union man, or a man who was not a member of said defendant associations, and said non-union man at once entered the employ of your orator. Thereupon, and soon after his entering the employ of your orator, said defendants Fritz Zampich, Edward Troeder, George Hoffman, Michael Schultz, Michael Murphy, Herman Karnarsky, and Henry Smithers re-

requested your orator to discharge said man because he was a non-union man and not a member of said defendant associations, and requested your orator to unionize its shop, or, in other words, wanted your orator to agree not to employ molders who were not members of said defendant associations, or some one of them, and threatened that, unless your orator did accede to their requests, your orator would have trouble with its molders. Your orator declined to grant said requests, or to accede thereto; and subsequently, and on or about the 17th day of April, 1901, said last-named defendants, and each and every one of them, went on strike, and left the employ of your orator. Shortly afterwards, Alfred Ensor, financial secretary, and Henry Nex, recording secretary, of said Local Union No. 244 of the Iron Molders' Union of North America, called upon your orator at your orator's place of business for the purpose, as they said, of adjusting the trouble between your orator and said striking molders or molders who had as aforesaid left the employ of your orator on the said 17th day of April, 1901, and urged that the difficulties between your orator and said last-named defendants might be settled, and your orator agree to unionize its said shop, and to agree not to employ as molders any person or persons who were not members of said defendant Iron Molders' Union of North America; but this your orator declined to do.

"Sixth. Your orator further shows that thereupon said defendants did unlawfully and illegally combine and conspire to force your orator to unionize its said shop, and to employ as molders no person or persons who were not members of said defendants, and, for the purpose of forcing or compelling your orator to so unionize its said shop, said defendants with the illegal intent and unlawful purpose of compelling your orator so to do, and in furtherance of said unlawful and illegal combination and conspiracy, did for a long time, to wit, for a period of two months, daily picket the premises of your orator, and linger and loiter about on, and in the neighborhood of the premises of your orator, and did unlawfully and illegally threaten and intimidate the molders then in the employ of your orator, and did threaten them with violence unless they left the employ of your orator and refused to work longer for your orator, and did threaten with violence and intimidate other molders who were seeking employment with your orator; and this to the detriment and loss of your orator, and contrary to its rights to the lawful use and enjoyment of its property.

“Seventh. Your orator further shows that for from about April 17, 1901, to June 18, 1901, and because and by reason of said unlawful acts on the part of said defendants, and because of the unlawful and illegal threats and intimidations used by said defendants, and the unlawful and illegal assaults of said defendants, or some of them, upon the molders then in the employ of your orator, it became and was necessary for your orator to convey the molders then in its employ to and from their homes; and to and from the premises of your orator, in covered vans or wagons, and at various intervals during said last mentioned period of time it became and was necessary for your orator to seek the assistance and aid of the police of said city of Detroit for the purpose of protecting the molders in its employ from the unlawful and illegal threats and intimidations and assaults of said defendants, or of some of them.

“Eighth. Your orator further shows that from about the 18th day of June, 1901, until the 20th of July, 1901, there was a comparative peace and quiet about the premises of your orator, and your orator and the molders in its employ were free from the threats and intimidations and assaults of the nature hereinbefore set forth; that at about 6.30 o'clock in the morning of the 20th day of July, 1901, said defendants and members of said defendant Iron Molders' Union of North America, Local Union No. 31 of the Iron Molders' Union of North America, and Local Union No. 244 of the Iron Molders' Union of North America, as your orator is advised and believes, and so charges the fact to be, to the number of from one hundred and fifty to two hundred, and in two separate bodies of seventy-five to one hundred, did approach the premises of your orator, and did station themselves in the path of the molders then in the employ of your orator, and who were then on their way to commence their day's work in the shops of your orator, and did then and there, and in pursuance of said illegal combination and conspiracy to force your orator to unionize its shops, or to employ no molders who were not members of said defendant associations, or of some one of them, throw bricks and stones at the molders then in the employ of your orator, and did threaten them with violence, and did threaten to beat, kill, smash and otherwise injure the molders then in the employ of your orator, should they (the said molders) continue to work for your orator, and did threaten to 'get at them' in their homes if they should continue to work for your orator and continue in its employ, and thereby did unlawfully and illegally

force and compel the molders then in the employ of your orator to cease and refrain to work for it and to leave its employ, and to break the contracts then and theretobefore existing between them and your orator.

“Ninth. And your orator further shows that about 25 of the molders in its employ on said 20th day of July, 1901, were, as your orator is advised and believes, and so charges the fact to be, forced and compelled by said threats and intimidations, and through fear of violence at the hands of said defendants and the members of said unions, to refuse to work longer for your orator, and to break the contracts then existing between them and your orator; and thus, as your orator is advised and believes, it was illegally and unlawfully deprived by said defendants of its just rights in the premises.

“Tenth. And your orator further shows that it is advised and believes, and so charges the fact to be, that by reason of said threats and intimidations, and by reason of fear of violence that said defendants and the members of said unions may do any person or persons seeking employment as molders with your orator, your orator will be unable to obtain molders, and will be thereby unlawfully and illegally damaged by the said actions of said defendants and the members of said unions.

“Eleventh. And your orator further shows that many of the molders who were so prevented from returning to the employ of your orator are desirous of working for and continuing in the employ of your orator, and your orator is desirous of having them work for and again enter its employ; but your orator shows that they will not enter its employ and continue to work for it unless said defendants and the members of said unions are enjoined or restrained from threatening them with violence, or otherwise unlawfully and illegally interfering with them, should they enter or attempt to enter the employ of your orator, or work or attempt to work for your orator; and your orator shows that it is advised and believes that this is an unlawful and illegal interference with, and contrary to, the just rights of your orator.

“Twelfth. And your orator further shows that because of said unlawful and illegal combination and conspiracy, the said illegal acts on the part of these defendants and the members of said unions, and all of which, your orator shows, have been done in pursuance of said unlawful and illegal combination and conspiracy to oblige or force your orator to unionize its shop, or to employ no molders who

were not members of said defendant unions, your orator has suffered great financial loss, of upwards of one hundred dollars (\$100), but the exact amount of which it is difficult for your orator to estimate, and further shows that if said defendants are permitted to continue such acts, or acts of a similar nature, great and irreparable injury and damage will be done to the business of your orator. * * *

“Wherefore your orator prays: (a) That the Iron Molders’ Union of North America, and its officers and members, Local Union No. 31 of the Iron Molders’ Union of North America, and its officers and members, Local Union No. 244 of the Iron Molders’ Union of North America, and its officers and members, Fritz Zampich, Edward Troeder, George Hoffman, Michael Schultz, Michael Murphy, Herman Karnarsky, and Henry Smithers, may answer this bill, but not under oath; answer under oath being hereby expressly waived. (b) That the combination or conspiracy of said defendants, or any or either of them, for the purpose of compelling, by threat, intimidation, or force, your orator to accede to the demands of said defendants, and to harass and intimidate the employes of your orator, and to interfere with the free employment and free services of employes of your orator, and to impede, obstruct, interfere with, or destroy the regular operation and conduct of the business of your orator, and to deprive your orator of free use of its property, may be decreed to be in violation of the rights of your orator, and against the law of the land, and that the said defendants, and each of them, may be perpetually restrained from doing any act or thing in furtherance of said combination for such purposes.” And then follows a prayer for a writ of injunction.³

Form No. 4.—*Bill to enjoin striking workmen from picketing their former employer’s place of business and to restrain them from using violence, threats, and intimidation, to prevent his employes from working for him, and other workmen from entering his service.*

“Plaintiff states that it is a corporation duly organized under the laws of the state of Missouri, and is engaged in the manufacture of shoes in the city of St. Louis, Missouri, at Twenty-first and Locust streets in said city, at which place its factory for the purpose of its said manufacturing business is located. And plaintiff says that it has in its employ in said manufacturing business, in its factory as

³ United States Heater Co. v Iron Molders’ Union, 129 Mich. 354, 88 N. W. 892.

aforesaid, between eight and nine hundred persons; that all of these persons are at work as operatives in some department or other of said factory; that of these employes as aforesaid a large number, to wit, about two or three hundred, are women and girls, and a large number, to wit, about two or three hundred, are young persons, many of them not being of age, and the balance of said operatives are adult men; that all of these persons are engaged in earning a livelihood at the business of this plaintiff aforesaid, and, on the other hand, this plaintiff requires the services of these persons to successfully carry on its business of manufacturing shoes as aforesaid. Plaintiff further states that all of these employes now in the employ of this plaintiff are desirous of continuing in the service of the plaintiff in its said business as aforesaid. Plaintiff further states that ten or fifteen days ago some of its employes, including all the defendants herein, except the defendants Thomas Beaty and P. J. McGarry, went out of the employ of this plaintiff on what is commonly called a 'strike,' claiming to have some grievance against this plaintiff, and which this plaintiff says was without any reasonable ground to rest upon, and thereupon attempted to inaugurate among the employes of this plaintiff what is commonly called a 'strike;' that thereupon the said defendants, lately employes of this plaintiff, together with the defendants Beaty and McGarry and divers other persons, unlawfully and wrongfully combined and confederated together to terrorize, and thereby, by intimidation and threats, to prevent the other employes of this plaintiff from peaceably or otherwise prosecuting their work in plaintiff's factory; that thereupon all of the defendants hereto, together with their associates and confederates, whose names are at this moment unknown to this plaintiff, began and have constantly pursued in a course of threats of personal violence and intimidation and persuasion, for the purpose, by means of such intimidation and threats and fear, to prevent the other employes of this plaintiff from peaceably or otherwise prosecuting their work in plaintiff's factory; that all of the said defendants hereto, together with divers and sundry other persons, who are their associates and confederates, have constantly hung about the plaintiff's said factory at the place aforesaid, and upon the streets in close proximity, for the purpose of picketing the premises of this plaintiff, and, by putting the employes of this plaintiff in fear of bodily injury, to thereby keep them from continuing their employment with this plaintiff, and also for the purpose of preventing

other persons from entering the employ of the plaintiff; and the said defendants and their associates and confederates, as a part of their policy of threats and intimidation, and for the purpose of carrying on their unlawful combination, have gone to the homes of divers of the employes of this plaintiff at nighttime, and then and there undertaken to induce, by persuasion and by intimidation and threats, the employes of this plaintiff from further prosecuting their work in plaintiff's said factory. And the plaintiff charges that the said defendants therein named, and their associates and confederates, for a number of days, by the use of threats and personal violence, intimidation and other unlawful means, have been and are now, undertaking to prevent the employes of this plaintiff from prosecuting their ordinary work, and are endeavoring to induce them, by the unlawful means aforesaid, to quit the employment of this plaintiff. And plaintiff says that by reason of the fact that a great many of its employes are women and girls and young persons, that the defendants aforesaid and their associates and confederates have succeeded in exciting in the minds of the plaintiff's said employes, or many of them, fear for their bodily safety, to such an extent that they cannot happily, as they have a right to do, prosecute their ordinary work; and plaintiff says, by reason of the premises, it cannot peaceably and successfully prosecute its said business. And plaintiff says it is without remedy at law, and can only be fully protected and relieved in a court of equity. Plaintiff therefore prays that the defendants, their associates and confederates, be enjoined by a temporary order of injunction, to be made final upon the hearing of this cause, issued out of this court, from in any manner interfering with the employes of this plaintiff now in the employ of the plaintiff, and from in any manner interfering with any person who may desire to enter the employ of this plaintiff, by the use of threats, personal violence, intimidation, or other means calculated to terrorize or alarm the plaintiff's employes, in any manner or form whatever, and that said defendants and their associates and confederates aforesaid be restrained by the order of this court from undertaking, by the use of the means aforesaid, to induce or to cause any of the employes of this plaintiff to quit the employment of this plaintiff, and that the defendants aforesaid and their associates and confederates be enjoined from congregating or loitering about the premises of this plaintiff at the place aforesaid, and that they be required by the injunction of this court to go about their ordinary

business, and to abstain from in any way interfering with the business of this plaintiff, and for such other and further and general relief as may to the court appear proper in the premises.”“

Form No. 5.—*Bill for restraining order and injunction to restrain strikers from picketing complainant's place of business, and from inducing the public by force or persuasion to withhold their patronage from him.*

To the Honorable the Judge of the Superior Court of King County, State of Washington, complaining of the defendants alleges:

1. That the plaintiff is now a resident and citizen of the city of Seattle, state of Washington, and for three years last past has been the proprietor of and has been operating that certain cafe in the city of Seattle known as the “Bismarck,” and the plaintiff has lease of said cafe for four years.

2. That said cafe is situated at the corner of Post and Madison streets in the city of Seattle. Said cafe has been doing a very large business. It affords a seating capacity for five hundred and fifty people, and until the interference with the business of the plaintiff hereinafter set forth, said cafe was patronized by from two thousand to three thousand persons per day.

3. On November 13, 1904, prior thereto, and now, the plaintiff had and now has in his employ as floor manager of said cafe, J. F. Kuehl, who was and is a competent man for said position, and was satisfactory to the plaintiff in his conduct of the business for which Kuehl was employed. Said Kuehl was not a member of the Cook's & Waiters' Union. Shortly prior to November 13, 1904, certain employes of the plaintiff, and the said Cooks' and Waiters' Union acting by its members and by said E. Smith, L. Reef and Bob Hasketh, demanded of the plaintiff that he discharge from his employ the said J. F. Kuehl because he was not a member of the Cooks' and Waiters' Union, with which demand the plaintiff refused to comply. Said persons then requested the plaintiff to inform them whether the plaintiff would allow them to endeavor to induce the said Kuehl to join said union, and plaintiff informed said persons that he had nothing to do with the action of said Kuehl in joining or refusing to join any union. On November 13, 1904, the said Cooks' and Wait-

* Hamilton Brown Shoe Company v Saxey, 131 Mo. 212, 32 S. W. 1106.

ers' Union, acting by the said Smith, Reef and Hasketh, and other members of said union, demanded of said J. F. Kuehl that he join the union with which demand the said Kuehl refused to comply, and thereupon the employees of the plaintiff, namely, the cooks and waiters, were at the dinner hour at said cafe immediately called out upon a strike, which said strike has ever since continued, under the direction and with the co-operation of said Cooks' and Waiters' Union, and especially under the direction of said Smith, Reef and Hasketh.

4. That ever since the inauguration of said strike, the said Smith, Reef and Hasketh and their associates, under the name of the Cooks' and Waiters' Union, have maintained pickets in and about the said cafe, among said pickets so maintained being the defendants above named other than the said Smith and Reef, and said pickets have interfered with the patrons of said cafe and have informed said patrons that said cafe was a scab place, that it was an unfair place, and that it should not be patronized by the public, and said defendants above named other than the said Smith and Reef, have congregated around the entrance to said cafe from day to day, and especially at meal hours, and have attempted to persuade persons from entering the cafe of the plaintiff, and they have abused the plaintiff as maintaining an unfair and scab place of business, and they have endeavored to persuade the public generally and the patrons of said cafe especially to boycott said cafe until the plaintiff should comply with the demand of said Cooks' and Waiters' Union.

5. That the defendants are acting in concert, with the malicious intention of injuring the plaintiff's business and of injuring his said place of business, and are endeavoring to carry out their threats by diverting the patronage which prior to said strike had been going to said cafe. Prior to said strike the plaintiff had by care and attention built up a fine business and a good name for said cafe, and was in the receipt of large amounts daily from his thousands of patrons. Since the inauguration of said picketing and boycotting of plaintiff's place of business by the defendants above named, the plaintiff's receipts at said place of business have been reduced from one hundred to one hundred and fifty dollars per day, and if said picketing and boycotting is allowed to continue plaintiff will be irreparably injured in the conduct of his business; and he is without any adequate remedy at law.

6. The Cooks' and Waiters' Union is an unincorporated associa-

tion, and has no property in any material amount, and it acts through its said president, secretary and walking delegate. It has no grievance against the plaintiff except that the plaintiff has refused to allow it to dictate to him how his business shall be conducted, and it has endeavored to make plaintiff agree that he will not employ any cook or waiter who is not first approved by said Cooks' and Waiters' Union. The other defendants above named cannot respond in damages to the plaintiff for their illegal actions, and if they could respond, the plaintiff would be driven to a multiplicity of suits in order to protect his business from a continuance of their illegal actions.

7. If the defendants are restrained and enjoined from interfering with the business of the plaintiff, he can continue to conduct his business in the ordinary and usual course of business, but with said picketing and boycotting being maintained by the defendants he will suffer irreparable loss.

8. That the plaintiff has already been damaged by the action of said defendants in the sum of fifteen hundred dollars (\$1,500.00), and so long as said picketing is maintained he will continue to be damaged in the sum of from \$100.00 to \$150.00 per day.

9. That the action of all of said defendants above named is joint and concerted action, pursuant to an agreement made between them prior to the inauguration of said strike.

10. That an emergency exists for the granting of a restraining order restraining said defendants and each of them, and their associates and confederates, from continuing to picket and boycott the plaintiff's said place of business, and from in any manner interfering therewith, for if the plaintiff should give notice of an application for a temporary injunction restraining said defendants from doing said acts, the damage to the plaintiff and his place of business would continue until the hearing on said application could be had, and every day during the maintenance of said picketing and boycotting of the business of plaintiff, plaintiff is seriously and irreparably injured, and the notice of an application for said temporary injunction, unless a restraining order should be granted, would incite the defendants and their confederates and associates to extra exertions to ruin the business of the plaintiff.

11. That in addition to the defendants above named, a large number of persons of the Cooks' and Waiters' Union and of certain other unions have associated and confederated with said defendants to

assist them in their said illegal acts, the names of said persons being to the plaintiff unknown.

Wherefore, plaintiff prays judgment as follows:

1. That a temporary restraining order be granted, restraining the above named defendants and each and every one of them and all members of said Cooks' and Waiters' Union and all persons associated with said defendants, from in any manner establishing any picket or boycott against the plaintiff, or against his place of business, and from in any manner whatsoever persuading or attempting to persuade any person whomsoever from patronizing plaintiff's said place of business.

2nd. That a rule to show cause issue, directed to the defendants above named, requiring them to show cause why a temporary injunction should not be granted, giving the plaintiff the said relief until the final hearing and determination of this case.

3rd. That upon the final hearing of this case a permanent injunction be granted, giving the plaintiff the relief above prayed for.

4th. That the court, upon said final hearing, take evidence to ascertain the damage, so far as it can be ascertained, received by the plaintiff, caused by said defendants and each of them and their associates and confederates, and that the plaintiff be awarded judgment against each and all of said defendants, and especially against said Cooks' and Waiters' Union, and all persons associating themselves together under said name, and that judgment in favor of plaintiff against said persons for the amount of such damage be awarded the plaintiff, together with its costs.

5th. And that the plaintiff have such other and further relief as to the court may seem just.⁵

Form No. 6.—*Bill to enjoin boycott of complainant's business by picketing his plant and inducing his employes and those willing to enter his employment not to work for him, by intimidation, violence, offers of money, or of work in other places, or transportation; by calling strikes against firms to prevent them from working for complainant; by publishing complainant's firm in a list of "offices on strike"; by inducing people not to deal with complainant's employes.*

⁵ Jensen v Cooks' Waiters Union, 39 Wash. 531, 81 Pac. 1069, 4 L. R. A. N. S. 302.

“1. That your orators are, and for some time have been, members of a voluntary association known as The Chicago Typothetæ, which was organized for the purpose of advancing and improving the printing and binding business in which your orators are severally engaged in the City of Chicago, and also for the purpose of employing skilled mechanics whose services may be employed by the members of said association; that each of your orators have been for several years past engaged in the printing business in the City of Chicago and has valuable and well equipped plants, consisting of machinery, tools, supplies, etc., necessary for that purpose, the value of which exceeds, in the case of each one of your orators, many thousand dollars, and that the business of each one of your orators in each year varies from \$50,000.00 to upwards of \$100,000.00. That in the conduct of said business your orators have each made many contracts for printing, all of which are necessarily for future delivery, in which, if carried to completion, there will be a substantial profit, but in which, if, for any reason, your orators are unable to fulfill them, a serious loss will be entailed, the exact amount of which cannot now be stated, but will aggregate many thousands of dollars. That, in order to successfully prosecute their business, it is necessary that their several plants run substantially without interruption; that the various departments of each plant are necessarily so connected as to be dependent upon each other so that the operation of each is essential to the completion of the work and the proper conduct of the business. That for the purpose of conducting their business, your orators are compelled to employ many skilled mechanics, among others compositors or typesetters, and that these workmen, by association in the course of their employment, become acquainted with the methods and habits of business in each particular shop so that by reason of that familiarity their services are especially valuable, and changing the workmen and employing those unfamiliar with the work beyond what is required by the ordinary exigencies of business, produces confusion and delay in the completion of work, and in many ways causes substantial injury. For this reason complainants have always sought to obtain workmen of high grade of skill and intelligence and it is important for the successful prosecution of their business that they be allowed to freely exercise their right of obtaining such workmen, irrespective of the question whether such workmen belong or do not belong to a labor union.

“2. Your orators show that the defendant, Typographical Union

No. 16, is a labor union organized and existing in the City of Chicago, whose members are typesetters and compositors; that it is one of the rules and a part of the policy of said union and its members that its members shall not work with mechanics who do not belong to said Union, but are what are called non-union men, and that said members shall, at the command and dictation of the union and its officers, strike and leave the employ of an employer who insists upon employing non-union men. A plant or shop in which only union men are employed is, by said union and in common parlance, called a closed shop, while one in which the employer exercises his right of employing whom he pleases is called an open shop. And it is the rule, principle and policy of said union and its members to compel employers to abandon their right to maintain an open shop and to the union's demand that they maintain only a closed shop.

"3. It is also the policy of said union and its members to adopt certain rules and regulations, both with reference to the length of time which a man shall work at his trade and the amount of wages which he shall receive, and to enforce these rules both of compelling their own members to strike and quit the employment of any one who will not submit to the union rules, and also by certain coercion upon the employer through strikes, interference with his business and workmen and other means so as to compel him to conduct his business in accordance with the rules laid down by the union. That another means adopted by said union for the purpose of accomplishing its said purpose is what is called boycott, by which said union endeavors by threats, persuasion and otherwise, to induce and compel people not to do composition and repair work for such an employer, by threatening that any one who does so will have a strike called upon his shop, his men taken out and his business similarly interfered with. That to accomplish this they direct their members in other shops to refuse to do any work brought to such shop from an employer against whom such a strike has been called and, if the work is done, to notify the union and call a strike against the person so doing it. By which means the union and its officials and members seek to tie up absolutely the business of any employers with whom they have a dispute so that no one will deal with him, and he will be wholly prevented from transacting his business and be so greatly injured that he will, as a means of relief, accede to their demands. That among other methods which are adopted by the union for the purpose of compelling an employer to submit to the

union's demands and of compelling him to conduct his business in accordance with their wishes, they adopt what is called the picket system, by which there is maintained about the plant of a shop where a strike is in progress a sufficient force of pickets to watch the employes going to and from their work, interfere with them in so doing, endeavor by threats both open and implied, by force and intimidation to prevent them from continuing in their employment, and to induce them to leave their employer for the purpose of inflicting injury upon him by interrupting and interfering with his business. That the union and its officers and members also, as a means of accomplishing the same result, offer money and other inducements to men thus employed, for the purpose of bribing them to leave their employment, in some cases offering them definite sums of money and in other cases paying their transportation to leave the city and securing or promising to secure for them work in other cities. That they also endeavor to induce the workmen to join the union so that the union may thereby acquire power and authority over them and compel them to obey its demands with reference to strikes and other matters affecting their employment. That all of this is done for the purpose of injuring the employer who is involved in a dispute with his employes or with the union and of compelling him by such injury to submit to the terms upon which the union insists. And your orators charge that all of the acts of defendants hereinafter set forth and of those conspiring with them to accomplish their ends were in furtherance of this plan and for the purpose of inflicting injury upon your orators.

"4. Your orators further show that said Typographical Union No. 16, in the early summer of 1905, announced that after January 1, 1906, it would insist that eight hours should constitute a day's work for compositors in the City of Chicago, and no workman should be allowed to work more than that time nor any employer allowed to employ workmen who worked more than eight hours. That your orators and said association known as The Chicago Typothetæ have, on the other hand, insisted on their right to determine for themselves upon what terms they would contract with their workmen, and upon their right to be left free to contract with workmen upon such terms as would be mutually satisfactory to both parties. For this reason the complainants and said The Chicago Typothetæ have incurred the hostility of said union and its members, and they have in various ways, as is more particularly hereinafter set forth, com-

bined together to injure said Typothetæ and its members and to prevent them from carrying on its business except in a manner satisfactory to the union.

“5. Your orators further show that on or about the 5th day of July, 1905, certain of your orators, to wit: The Faithorn Printing Co. and in August, 1905, R. R. Donnelly & Sons Co., A. R. Barnes & Co., Clinic Publishing Co., employed non-union compositors in their respective offices, and thereupon said Typographical Union No. 16 directed the members of that union who were working for said complainants to strike and leave their employment because of the presence of said non-union workmen in the shop. That shortly thereafter the officials of said union called upon other members of your orators and demanded that they agree with said union and its members that on and after January 1, 1906, they would submit to the demands of the union for an eight-hour day and would also agree to maintain a closed shop. The complainants so applied to by the union refused to accede to this demand or to make such agreement, and thereupon the officials of said union directed all of the union men belonging to said union in said shops to strike and to quit work, and said workmen in obedience to the command of said union, immediately left the employment of your complainants, and since that time have refused to work for them. That immediately upon the calling of said strike said union and its officers and other defendants inaugurated and have since maintained a system of picketing the places of business of said complainants, the pickets being in some instances the workmen who had left the employment of the complainants, and in some cases were other persons hired by the union for that purpose, or by members of the union, or who were ordered there by the union for that purpose. That these pickets have surrounded the respective places of business of the complainants, have maintained a constant watch upon its employes going to and from its business and in many cases intimidated them and endeavored, by threats and in some cases by assaults and open violence, to compel them to leave the employment of the complainants. That in other cases they have endeavored to induce or to compel the employes to leave the service of the complainants by bribes and offers of money, by offering to procure for them work in other places, or by offering or giving them transportation to leave the city, and by these and similar means have induced, and are now

constantly trying to induce them to leave the employment of the complainants. That the money necessary for this purpose is furnished by said union, and that the pickets who thus watch are maintained by and are under the control and direction of the union and its said officers and the committees appointed by it, for the purpose of continuing said strike. And your orators charge that these and other methods of interfering with their business herein set forth have been for several weeks continuously carried on by said union and its officers and members. And your orators present herewith the affidavits of numerous named individuals, and make the same a part of this bill, and offer the same as evidence, showing for greater certainty the details of many acts of such interference by said defendants.

“6. Your orators further allege that by this means said union and its officers and the other defendants have seriously interfered with the business of each of your orators; that they have taken away from them, by the means above referred to, many of their employes, and have prevented them from obtaining other employes who are willing to work in the places of those who had thus voluntarily left their work. That your orators have on hand many contracts and a large amount of unfinished work which they can complete through the service of men who are willing to work upon terms mutually satisfactory to them and to said complainants, if said defendants are prevented from further carrying out their said plans and are prevented by the injunction of this court from further interference with the business of your orators and with their efforts to carry on said business.

“7. Your orators further show that the defendants are acting together in pursuance to a common plan to injure your orators and to interfere with their business and to prevent them from carrying on their business as aforesaid, and that they are acting against all of your orators, both jointly and severally, for the purpose of injuring each and all of them and of compelling each and all of them to agree to the terms imposed by said union and to the conditions upon which they are willing to work as above stated.

“8. Your orators further show and allege that they have no adequate remedy at law for the protection of their interests; that said union is a voluntary organization and that its members are financially irresponsible so that no adequate judgment for damages

against them or any of them could be collected; that the injury to the business of your orators is, and is intended to be, continuous in its effect and to be carried to such an extent as practically to destroy their business, the value of their plants and the capital invested therein, and that your orators are wholly without remedy except by an injunction issued by this court.

“9. That your orators further show that there have been many strikes called, organized and maintained by labor unions in the City of Chicago during the past three years in which similar picket systems have been maintained and in which the unions calling the strikes and others sympathizing with and aiding them have maintained similar picket systems, and by said picket systems and otherwise, have by force, intimidation, violence, persuasion and otherwise, interfered with the employers against whom said strikes have been maintained, who in common parlance are called ‘struck houses,’ and have interfered with their employes so that it has become a matter of common knowledge and belief among non-union men and those who are willing to work where strikes are in progress that it is unsafe for them to work for a struck house or to incur the enmity of a union by taking the place of a striker or assisting in any way an employer having a strike to carry on his business, and thereby many men have been intimidated, and all such workmen have just cause for alarm whenever a picket system is maintained, and for believing that injury will result to them in some form if they work or in any way give assistance to a struck house. That this feeling is general and that added force is given to the mere presence of a picket line and to the efforts of the union and its members in endeavoring to dissuade non-union men from working for such an employer. That this feeling applies to the situation presented by your orators’ case, and by means whereof the efforts of said pickets and of the defendant union and its members are made effective.

“10. Your orators further show that the defendant union, in its endeavor to force its demand for an eight-hour day and the closed shop, as above stated, presented to the different printing houses in Chicago and compelled or induced many of them to sign agreements to that end, and that it is the purpose of said Typographical Union in calling and maintaining said strikes against your orators and in doing against them the acts herein complained of, to coerce

them into making similar agreements with said union. A copy of which agreement as printed and prepared by the union is hereto attached, and is as follows:

‘Chicago, Ill., Sept. 14, 1905.

‘On behalf of and with authority for the firm of..... the undersigned hereby agrees to employ none but members of the Chicago Typographical Union No. 16, in any department of the composing room, or upon any composition, either by hand or machine; or upon any work such as reading proof, making up forms, care of printing material, or upon any other work pertaining to the composing room; and agrees to provide sanitary and healthful workrooms; and further agrees to respect and observe the conditions imposed by the Constitution, By-laws and Scale of Prices of Chicago Typographical Union No. 16, of current date.

‘Beginning January 1, 1906, the eight-hour day shall go into effect.

‘No work shall be done for struck shops having difficulty with Typographical Union No. 16.

‘Chicago Typographical Union No. 16 agrees to furnish competent union workmen on demand.

‘This agreement to continue for one year and end October 1, 1906.

For the Firm of

.....

President.

.....

Secretary.

Chicago Typographical Union No. 16.’

“That in the furtherance of their said design and to create and maintain a boycott against all printing shops who would not sign said contract and agree to their terms, said union issued circulars directed to the representatives of the union working in different shops in the City of Chicago and elsewhere (which representatives are called chapel foremen), as follows:

Telephone 3995 Main.

‘(Chicago Typographical Union,
Organized June, 1852.)

Office of
CHICAGO TYPOGRAPHICAL UNION NO. 16.
Garden City Block, 56 Ave.,
Room 227.

Chicago, Ill., August 31, 1905.

To Chairman of Union Chapels Under the Jurisdiction of C. T.
U. No. 16:

'Gentlemen: As you are doubtlessly aware, we have strikes on at the following offices (naming 19 offices, mostly of complainants).

'You are instructed to report immediately any work coming to your office from any of these firms. The Executive Committee has ordered that all work stop on work for strike-bound houses. If chairman will report such work immediately, an officer of the union will call and endeavor to adjust such difference.

'Work done in its entirety (composition, presswork, etc.), or balance of work in union house, and a contract entered into to that effect for a period of time, will be considered satisfactory.

'By order of the Executive Committee, Chicago Typographical Union No. 16.

EDWIN R. WRIGHT,

JOHN C. HARDING,

President.

Organizer.'

"11. Your orators further show that the defendants: Fred C. Klein, Hack and Anderson, and Sleepeck Helman Printing Co., who are engaged in the printing business, have been induced by said union and its officers to sign contracts with said union similar to that above set forth; that but for that fact they would be willing to do work for your orators, but by reason of their having signed contracts, they will be induced to refuse to do so by fear that said union will call a strike against them and enforce a similar boycott—which your orators believe and charge said union will do. And your orators further charge that said agreements are illegal and void, and ought not to be observed by the parties so making the same, and that said contracts are a part of the conspiracy against your orators, and said union should not be allowed to enforce them by calling strikes against said Fred C. Klein Co., Hack & Anderson, or Sleepeck-Helman Printing Co., and thereby injuring your orators by compelling said parties to refuse work for them. That by means of these circulars and similar attempts said defendant union, its officers and members, have organized,

and are now attempting to enforce, a boycott against the complainants and seek to prevent them from having work done by other printing houses or by shops to whom they might apply for work so as to prevent the complainants from carrying on their business except under condition that they make an agreement similar to that demanded by the union. In furtherance of this plan and conspiracy said union publishes weekly what is called a 'directory of union printing offices of Chicago,' containing the names of offices who have been willing to submit to the union's terms, and containing also a list of 'offices on strike,' in which latter list are published the names of complainants; and that this directory is widely circulated, for the purpose of showing to all persons the names of the printing offices with whom they can deal with safety, because they have not incurred the ban of union labor, and for the purpose of showing also the names of those who, merely because their men are on strike, are boycotted by the union, and those whom it can induce to assist it in its said efforts. That said union and those coöperating with it, as a part of said plan, are also attempting and will continue to attempt to create a boycott against your orators' employes to induce people in their neighborhood and elsewhere not to deal with them, for the purpose of thereby compelling said employes to leave your orators' service.

"12. Your orators further allege that among those who, as pickets and otherwise, are assisting said union and its officers in their said plans and acts against your orators, are the co-defendants, Edward E. Bessette (Naming numerous other persons), and that said Bessette is, as your orators are informed and believe, in charge of said pickets and of their operations.

"13. Your orators further show that by those and other means, all of which are directed toward the common end by the defendants and by others assisting them and by said union in their aforesaid plan, said union, its officers and the other defendants seek to injure said complainants and to destroy their business as far as possible, for the purpose, through the injury thus created, of compelling them to agree to the union's terms and of striving to seduce their employes so as to prevent them from carrying on their business. That said defendants will continue their said efforts unless restrained by the injunction of this court, and that without such injunction the complainants will be without remedy."

The prayer of the bill was for an injunction against the acts complained of.⁶

Form No. 7.—*Indictment for conspiracy to boycott by threats that if customers of party boycotted failed to withhold their patronage from him, their customers would in turn be coerced into withholding patronage from them.*

“There is, and for more than twelve months last past there has been, in the city of Richmond, a certain trades union or association called and known as the ‘Richmond Typographical Union, No. 90.’ That there is in said city, and has been for more than twelve months last past, a mercantile firm or partnership composed of G. H. Baughman, E. A. Baughman, and C. C. Baughman, who do business, under the firm name and style of Baughman Brothers, as printers and stationers. That there is in the said city, and has been for more than twelve months last past, another trades union or labor association, called the ‘Knights of Labor.’ That the said partnership of Baughman Brothers have a lawful right to follow and pursue their said business as printers and stationers, without being molested or interfered with by any one so long as they peaceably pursue the same according to the laws of the land. That the trades union or association called ‘Richmond Typographical Union, No. 90,’ is composed of about one hundred members, most of whom are to the grand jurors unknown. That the said trades union or labor association called the ‘Knights of Labor’ is composed of several thousand members, most of whom are to the grand jurors unknown. That Joseph M. Shelton, G. Waddy Wilde, and W. F. Crump are members of said trades union or association called ‘Richmond Typographical Union, No. 90,’ and W. H. Mullen, James A. Healy, J. M. Lewis, Perry Jones, and J. H. Schonberger are members of said trades union or labor association called ‘Knights of Labor.’ That within twelve months last past, to-wit, on the 4th day of February, 1886, and on many days thereafter, the said G. Waddy Wilde, Joseph M. Shelton, and W. F. Crump, together with all the other members of the said trades union or association called ‘Richmond Typographical Union, No. 90,’ and W. H. Mullen, James A. Healy, J. M. Lewis, Perry

⁶ Chicago Typo. Union No. 16 v Barnes & Co., 134 Ill. App. Ct. Rep. 22, at pp. 22 to 33.

Jones, and J. H. Schonberger, together with all the other members of the said trades union or labor association called the 'Knights of Labor,' who are to the grand jurors unknown, with force and arms, at the said city, and within the jurisdiction of the said hustings court, well knowing the facts hereinbefore averred, did unlawfully, maliciously, wickedly, and corruptly, knowingly and intentionally, combine, conspire, and confederate together to injure, ruin, break up, and destroy the said G. H. Baughman, E. A. Baughman, and C. C. Baughman, trading as Baughman Brothers, in their said business as printers and stationers, as aforesaid, by unlawfully, wickedly, maliciously, and corruptly, knowingly and intentionally, making threats to a great number of persons, to-wit, to H. J. Myers, a member of a mercantile firm in said city trading as Slater, Myers & Co., which firm is composed of William L. Slater, Herman J. Myers, and John S. Wade; to William F. Seymore, a member of a mercantile firm in said city trading as J. H. Griffith & Co., which firm is composed of J. H. Griffith and William F. Seymore; to Luke Harvey, a member of a mercantile firm in said city trading as Ellison & Harvey, which firm is composed of William Ellison, Luke Harvey, and Fred. L. Swift; to G. A. Lathrop, a member of a mercantile firm in said city trading as G. A. Lathrop & Co., which firm is composed of the said G. A. Lathrop; and to many other persons to the grand jurors unknown,—all of whom had theretofore been regular customers of the said firm of Baughman Brothers,—that if they, the said H. J. Myers, W. F. Seymore, Luke Harvey, G. A. Lathrop, or their said mercantile firms as above named, or other persons to the grand jurors unknown, thereafter bought anything from the said firm of Baughman Brothers, or employed them, the said Baughman Brothers, in their said business as printers, they, the said Wilde, Shelton, Crump, and all the members of the said trades union or association called 'Richmond Typographical Union, No. 90,' and they, the said Mullen, Jones, Lewis, Healy, and Schonberger, and all the other members of the said trades union or labor association called the 'Knights of Labor,' would do all in their power to break up and destroy the business of the said H. J. Myers, W. F. Seymore, Luke Harvey, G. A. Lathrop, and their said mercantile firms as above named, and many other persons to the grand jurors unknown, who had theretofore been customers of the said Baughman Brothers; and, by and through said threats, they, the said Crump, Wilde, Shelton,

Mullen, Lewis, Healy, Jones, and Schonberger, and all the other members of the said trades union or association called 'Richmond Typographical Union, No. 90,' and all the other members of the said trades union or labor association called the 'Knights of Labor,' did then and there, by reason of said threats, drive off, hinder, deter, and prevent the said H. J. Myers, W. F. Seymore, Luke Harvey, G. A. Lathrop, and their said mercantile firms, as above named, and many other persons to the grand jurors unknown, who had theretofore been customers of the said Baughman Brothers, from buying anything from, or from dealing with in any way, or from employing as printers, the said firm or partnership of G. H. Baughman, E. A. Baughman, and C. C. Baughman, doing business as Baughman Brothers, as aforesaid; and they did then and there, by their said unlawful, malicious, wicked, and corrupt threats, and by their said unlawful acts as hereinbefore set forth, do a serious injury to the business of the said Baughman Brothers, against the peace and dignity of the commonwealth of Virginia.'"

Form No. 8.—*Indictment for conspiracy to boycott manufacturer by preventing workmen from working for him by violence, threats and intimidation.*

"Be it remembered that at the county court begun and holden at St. Johnsbury within and for said county of Caledonia on the first Tuesday of June, in the year of our Lord one thousand eight hundred and eighty-five, the grand jurors within and for the body of the county of Caledonia, aforesaid, now here in court duly impaneled and sworn, upon their oaths present that James D. Grant, Charles C. Stewart, Orrin E. Clay, John McGeough, Edward O'Toole, and Lewis Hill, all of Ryegate, in the county of Caledonia, with divers evil-disposed persons to the said grand jurors unknown, on the thirteenth day of April, A. D. 1885, at Ryegate, in the county of Caledonia, did unlawfully combine, conspire, confederate, and agree together to prevent, hinder, and deter, by violence, threats, and intimidations, the Ryegate Granite-Works, a corporation then and there being and existing by laws, from retaining and taking into its employment James O'Rourke, William Goodfellow, and other persons to the said grand jurors unknown, then and there being as laborers in the labor and occupation of granite cutting, to

⁷ Crump v Com., 84 Va. 927, 6 S. E. 620, 10 Am. St. Rep. 695.

the great damage of the said Ryegate Granite-Works, and the said James O'Rourke and William Goodfellow and others, and to the evil example of all men, and against the peace and dignity of the state.

“And the grand jurors aforesaid, upon their oath aforesaid, further present that the said James D. Grant, Charles C. Stewart, Orrin E. Clay, John McGeough, Edward O'Toole, and Lewis Hill, all of Ryegate, in the county of Caledonia, with other evil-disposed persons to the said grand jurors unknown, at Ryegate aforesaid, on the thirteenth day of April, A. D. 1885, maliciously intended to control, injure, terrify, and impoverish the Ryegate Granite-Works, a corporation then and there being and existing by law, and by violence, threats, and intimidation to force and compel said corporation to conform to the rules, regulations, by-laws, and decrees of a branch of the National Stone-Cutters' Union, an organization then and there existing, and to deprive said corporation of all the workmen and laborers then and there by it employed in its works and shops there situated, unlawfully did conspire, combine, confederate, and agree to terrify, frighten, alarm, intimidate, and drive away by threats and intimidations, James O'Rourke, Hugh J. O'Rourke, William Goodfellow, and others to the said grand jurors unknown, who were then and there workmen and laborers of the said Ryegate Granite-Works, to the evil example of all men, and against the peace and dignity of the state.

“And the grand jurors aforesaid, upon their oath aforesaid, further present that the said James D. Grant, Charles C. Stewart, Orrin E. Clay, John McGeough, Edward O'Toole, and Lewis Hill, being granite cutters by occupation, and not being content to allow other granite cutters to pursue their avocation and employment wherever they wished, and upon whatever terms might be agreed upon between said other granite cutters and their employers, but contriving and intending to destroy the effect of free competition in the price and value of labor, to coerce and constrain said other granite cutters and their employers, and to compel said other granite cutters to desist from labor, and to deprive their employers thereof of all their laborers and apprentices, and thereby to ruin and destroy their business, did on the thirteenth day of April, A. D. 1885, at Ryegate aforesaid, with force and arms, combine, conspire, confederate, and unlawfully agree together, and did enter into an organization and compact whereby it was, among other things, provided that none of

the parties to said compact and organization should labor or cut granite for any person or persons or corporation whose shop or works had been, by the parties to said compact and organization, disapproved of and adjured to be 'scab' shops or works, and that no other granite cutters should be allowed to work or cut granite for or in such 'scab' shops or works, and that all other granite cutters in this country should be notified that the shops or works so adjudged to be 'scab' were 'scab,' and that work therein by granite cutters was forbidden by said organization, and that all granite cutters who disregarded such prohibition, and worked or cut granite in such 'scab' shop or works, should be called 'scabs,' and their names should be published as 'scabs' in a certain newspaper called the Granite Cutters' Journal, a newspaper of wide circulation among granite cutters in this country, and that all granite cutters in this country should thereby be notified not to associate or work in the same shop with any of the parties so published as 'scabs.' And the said James D. Grant, Charles C. Stewart, Orrin E. Clay, John McGeough, Edward O'Toole, and Lewis Hill, in pursuance of the said unlawful conspiracy, combination, and compact, with the intent to prevent the prosecution of work in the shops and works of said Ryegate Granite-Works next hereinafter mentioned, did then and there threaten and say to James O'Rourke, Hugh J. O'Rourke, William Goodfellow, and others who were then and there laborers, workmen, and apprentices as granite cutters in the shops and works there situate, of the Ryegate Granite-Works, a corporation then and there being and existing by law, and there carrying on the business of cutting granite and manufacturing granite work, that said shops and works of the said Ryegate Granite-Works were 'scab' shops and 'scab' works, and that no granite cutters were allowed to work therein, and that the said James O'Rourke, Hugh J. O'Rourke, William Goodfellow, and others would be 'scabs' if they worked in said last-named shops or works, and that their names would be published as 'scabs' in said Granite Cutters' Journal if they worked in said last-named shops or works, and that they would be disgraced in the eyes of all granite cutters, and would be avoided and shunned by all granite cutters, and that all other granite cutters would refuse to work or associate with them if they worked in said last-named shops or works, and were published as 'scabs' as aforesaid; and by means of the said sayings and threats the said James D. Grant, Charles C. Stewart, Orrin E. Clay, John Mc-

Geough, Edward O'Toole, and Lewis Hill did then and there affright, drive away, and prevent the said James O'Rourke, Hugh J. O'Rourke, William Goodfellow, and others from accepting, undertaking, and prosecuting their said employment in said shops and works of the said Ryegate Granite-Works, with the intent of them, the said James D. Grant, Charles C. Stewart, Orrin E. Clay, John McGeough, Edward O'Toole, and Lewis Hill last aforesaid.

"And so the said grand jurors say, on their oath aforesaid, that the said James D. Grant, Charles C. Stewart, Orrin E. Clay, John McGeough, Edward O'Toole, and Lewis Hill did then and there in manner aforesaid, by threats, intimidation, and the unlawful and grievous conspiracy aforesaid, carried into execution as aforesaid, affright, drive away, and prevent the said James O'Rourke, Hugh J. O'Rourke, William Goodfellow, and others from accepting, undertaking, and prosecuting the employment and work of stone-cutting in said shops and works of said Ryegate Granite-Works, with the unlawful intent of them, the said James D. Grant, Charles C. Stewart, Orrin E. Clay, John McGeough, Edward O'Toole, and Lewis Hill thereby to prevent the prosecution of work in said Ryegate Granite-Works, said shops and works, contrary to the form and effect of the statute in such case made and provided, and against the peace and dignity of the state.

"And the said grand jurors, upon their oath aforesaid, further present that said James D. Grant, Charles C. Stewart, Orrin E. Clay, John McGeough, Edward O'Toole, and Lewis Hill, all of Ryegate aforesaid, with the unlawful intent and purpose to prevent the prosecution of work which was then and there carried on by the Ryegate Granite-Works, a corporation then and there existing under the laws of the state of Vermont, in the manufactory of the Ryegate Granite-Works aforesaid, then and there situate, did then and there threaten the said James O'Rourke, Hugh J. O'Rourke, William Goodfellow, and others to the said grand jurors unknown, who were then and there at work in said manufactory, that they, the said James O'Rourke, Hugh J. O'Rourke, William Goodfellow, and others, would be 'scabs,' and be called and advertised as 'scabs,' and that they, the said James D. Grant, Charles C. Stewart, Orrin E. Clay, John McGeough, Edward O'Toole, and Lewis Hill would cause the names of the said James O'Rourke, Hugh J. O'Rourke, William Goodfellow, and others to be published in the 'scab' list in the Granite Cutters' Journal, a paper of wide and extended circulation

among granite cutters in the United States, if they, the said James O'Rourke, Hugh J. O'Rourke, William Goodfellow, and others continued in the said manufactory, and the said term 'scab,' as so threatened to be used by said James D. Grant, Charles C. Stewart, Orrin E. Clay, John McGeough, Edward O'Toole, and Lewis Hill, is an opprobrious and disgraceful epithet, the use of which, in the manner threatened by the said James D. Grant, Charles C. Stewart, Orrin E. Clay, John McGeough, Edward O'Toole, and Lewis Hill, would have the effect to disgrace the said James O'Rourke, Hugh J. O'Rourke, William Goodfellow, and others, and make it difficult and impossible for them to get employment in their said employment of cutting stone in places where work of that character was wanted, and the effect of using the said term 'scab,' in the manner threatened was well known both to the said James D. Grant, Charles C. Stewart, Orrin E. Clay, John McGeough, Edward O'Toole, and Lewis Hill, and also to the said James O'Rourke, Hugh J. O'Rourke, William Goodfellow, and others, if they, the said James O'Rourke, Hugh J. O'Rourke, William Goodfellow, and others continued work in said manufactory, and by said threats, then and there made, they, the said James D. Grant, Charles C. Stewart, Orrin E. Clay, John McGeough, Edward O'Toole, and Lewis Hill did then and there, at Ryegate, aforesaid, unlawfully affright, drive away, and prevent the said James O'Rourke, Hugh J. O'Rourke, William Goodfellow, and others from prosecuting said employment in said manufactory, contrary to the form and effect of the statute in such case made and provided, and against the peace and dignity of the state.'"⁸

Form No. 9.—*Indictment for conspiracy to procure discharge of workman from employment, and prevent him from working at his trade by violence, intimidation, threats, etc., directed against his employer and possible employers.*

First count: "That Josiah B. Dyer and Thomas Quinlan, of Barre, in the county of Washington, and Frank Morrill, Patrick Morrison, Peter Hernon, E. D. Sherburne, H. P. Sylvester, Thomas Hocking, and Alex. Cruickshank, of Montpelier, in the county of Washington, with divers evil-disposed persons, to the state's attorney unknown, on the 22nd day of November, in the year of our Lord one thousand eight hundred and eighty-nine, at Montpelier, in

⁸ State v Stewart, 59 Vt. 273, 59 Am. Rep. 710, 9 Atl. 559.

the county of Washington, did unlawfully combine, conspire, confederate, and agree together to prevent, hinder, and deter, by violence, threats, and intimidation, one Jacob McClure, then and there being a stonecutter by trade and occupation, in the employment of the Wetmore & Morse Granite Company, of Montpelier aforesaid, a corporation then and there being and existing by law, from obtaining work or employment, or continuing in his said work and employment, at his said trade or occupation, in the said shops of the said Wetmore & Morse Granite Company, of Montpelier aforesaid, or in any other shops or works for the cutting or manufacture of granite work, with the malicious and unlawful intent of them, the said Josiah B. Dyer, Thomas Quinlan, Frank Morrill, Patrick Morrison, Peter Hernon, E. D. Sherbourne, H. P. Sylvester, Thomas Hocking, and Alex. Cruickshank by said violence, threats, and intimidation, to prevent the said Jacob McClure from obtaining work or employment at his said trade and occupation in the shops and works of the said Wetmore & Morse Granite Company, of Montpelier aforesaid, or in any other shops or works for the cutting or manufacture of granite work." Second count: "That Josiah B. Dyer, Thomas Quinlan, of Barre, in the county of Washington, and Frank Morrill, Patrick Morrison, Peter Hernon, E. D. Sherburne, H. P. Sylvester, Thomas Hocking, and Alex. Cruickshank, of Montpelier, in the county of Washington, on the 22nd day of November, in the year of our Lord one thousand eight hundred and eighty-nine, at Montpelier, in the county of Washington, being granite cutters by occupation, not being content to allow other granite cutters to pursue their avocations and employment wherever they wished, and on whatever terms might be agreed upon between said other granite cutters and their employers, but contriving and unjustly and unlawfully intending to destroy the effect of free competition in the price and value of labor, to coerce and constrain said other granite cutters, and to compel said other granite cutters to join and become members of a branch of the National Stonecutters' Union, an organization then and there organized and existing at Montpelier aforesaid, and to prevent said other granite cutters from obtaining work at their said trade and occupation, did on the 22nd day of November, A. D. 1889, at Montpelier aforesaid, with force and arms, combine, conspire, confederate, and unlawfully agree together, and did enter into an organization and compact whereby it was, among other things, provided, that no person or persons not members of

the said branch of the said stonecutters' union should be allowed to work in the shops of the Wetmore & Morse Granite Company, of Montpelier aforesaid, or in any other shop or works for the cutting of granite or manufacturing of granite work. And the said Josiah B. Dyer, Thomas Quinlan, Frank Morrill, Patrick Morrison, Peter Hernon, E. D. Sherbourne, H. P. Sylvester, Thomas Hocking, and Alex. Cruickshank, in the pursuance of the said unlawful conspiracy, combination, and compact, with the intent by violence, threats, and intimidation to prevent one Jacob McClure, then and there being a stonecutter by trade and occupation, from obtaining or continuing work at his occupation of granite cutting in the said shops or works of the said Wetmore & Morse Granite Company, of Montpelier aforesaid, or in any other shops or works for the cutting of granite, did then and there threaten and say to Jacob McClure, who was then and there a laborer and workman as a granite cutter in the shops and works of the said Wetmore & Morse Granite Company, of Montpelier aforesaid that if he, the said Jacob McClure, did not join and become a member of a branch of the National Stonecutters' Union, then and there organized and existing at said Montpelier, that they, the said Josiah B. Dyer, Thomas Quinlan, Frank Morrill, Patrick Morrison, Peter Hernon, E. D. Sherbourne, H. P. Sylvester, Thomas Hocking, and Alex. Cruickshank, and others unknown to the state's attorney, would organize a strike against the said Jacob McClure in the shops and works of the said Wetmore & Morse Granite Company, of Montpelier aforesaid, and would prevent him, the said Jacob McClure, from obtaining work at his said trade of stonecutting in said shops of the said Wetmore & Morse Granite Company, of Montpelier aforesaid, or in any other shops or works where granite cutting or manufacturing was carried on. And the said Jacob McClure refusing then and there to become a member of the said branch of the National Stonecutters' Union, the said Josiah B. Dyer, Thomas Quinlan, Frank Morrill, Patrick Morrison, Peter Hernon, E. D. Sherbourne, H. P. Sylvester, Thomas Hocking, and Alex. Cruickshank did then and there threaten and say to the said Wetmore & Morse Granite Company, of Montpelier aforesaid, that unless the said Jacob McClure was turned away from his employment as a granite cutter in the said shops and works of the said Wetmore & Morse Granite Company, of Montpelier aforesaid, they, the said Josiah B. Dyer, Thomas Quinlan, Frank Morrill, Patrick Morrison, Peter Hernon, E. D. Sherbourne, H. P. Sylvester, Thomas

Hocking, and Alex. Cruickshank, would organize a strike against the said Jacob McClure, and would prevent the said Wetmore & Morse Granite Company, of Montpelier aforesaid, from obtaining or employing any workmen or laborers in their said shops or works. And by means of said sayings and threats the said Josiah B. Dyer, Thomas Quinlan, Frank Morrill, Patrick Morrison, Peter Hernon, E. D. Sherbourne, H. P. Sylvester, Thomas Hocking, and Alex. Cruickshank did then and there affright, drive away, and prevent the said Jacob McClure from obtaining and continuing his employment and labor in the said shops or works of the said Wetmore & Morse Granite Company, of Montpelier aforesaid. And so the said state's attorney, on his oath aforesaid, says that the said Josiah B. Dyer, Thomas Quinlan, Frank Morrill, Patrick Morrison, Peter Hernon, E. D. Sherburne, H. P. Sylvester, Thomas Hocking, and Alex. Cruickshank did then and there, in manner aforesaid, by threats, intimidation, and the unlawful and grievous conspiracy aforesaid, carried into execution as aforesaid, prevent the said Jacob McClure from obtaining and prosecuting his said employment and work of stonecutting in the said shops and works of the said Wetmore & Morse Granite Company, of Montpelier aforesaid, or in any other shop or works for the manufacture or cutting of granite.””

Form No. 10.—*Declaration in action to recover damages for procuring plaintiff's discharge from employment and preventing his obtaining employment by threats, persuasion, etc.*

In a plea of the case, for that the plaintiff on the last day of May, A. D. 1895, and for twenty-two years prior to that time, had been at work for and employed by the Mount Waldo Granite Company, a corporation duly existing according to law and having an established place of business at said Frankfort, in the business of cutting stone for said Mount Waldo Granite Company, and was making large profits out of said employment as a stone cutter, working by the piece, cutting stone for said company, to wit, making the sum of two dollars and seventy cents per day; and the plaintiff alleges that he would have continued to work for said Mount Waldo Granite Company in the business of stone cutting, making large profits as aforesaid, in his said employment as a stone cutter for said Mount Waldo Granite Company, from the last day of May,

* State v Dyer, 67 Vt. 690, 32 Atl. 8.

A. D. 1895, to the twenty-sixth day of November, A. D. 1895, but for the wrongful acts, inducements, threats, persuasions and grievances committed by said defendants against the said plaintiff as hereinafter set forth. And the plaintiff avers that the said defendants, on the said last day of May, A. D. 1895, and at divers times thereafter until the date of the plaintiff's writ, with divers other persons whose names are unknown to the plaintiff, all as members of the Mt. Waldo branch of the Granite Cutters' National Union, did unlawfully and without justifiable cause, molest, obstruct and hinder the plaintiff from carrying on said trade, occupation or business as a stone cutter for the said Mount Waldo Granite Company, and wrongfully, unlawfully, and unjustly had him discharged without any justifiable cause from the employment of the said Mount Waldo Granite Company by wilfully threatening, persuading, inducing and by other overt acts, compelling the said Mount Waldo Granite Company, against its will and without any desire on its part so to do, to discharge the said plaintiff from its employ for the sole reason that the plaintiff would not become a member in the order of the Mount Waldo Branch of the Granite Cutters' National Union; whereby and by reason of the unlawful acts, threats, inducements and persuasions of the said defendants and divers other persons to the plaintiff unknown, acting as members of said Mount Waldo Branch of the Granite Cutters' National Union, the said plaintiff lost his said employment and the compensation which he would have received therefor as aforesaid, to wit, the sum of two dollars and seventy cents per day from said last day of May, A. D. 1895, amounting to the sum of four hundred and twenty-three dollars and ninety cents, all of which injury the plaintiff has suffered through the wrongful acts, inducements, persuasions and threats of the said defendants and divers other persons whose names are unknown to the plaintiff, acting as members of the Mount Waldo Branch of the Granite Cutters' National Union, and through no fault of his and through no fault of the said Mount Waldo Granite Company, but solely through the unlawful acts, persuasions, threats, inducements, molestations and hindrances of the said defendants as aforesaid, whereby and by reason of which the said plaintiff lost his employment as aforesaid, and all the advantages and profits that he would otherwise have made and received from the service and employment in which he was. And the plaintiff alleges that from the said last day of May, A. D. 1895, to the said twenty-sixth day of

November, A. D. 1895, he has been unable to procure work as a stone cutter from the Mount Waldo Granite Company, although said Mount Waldo Granite Company has ever been ready and willing to employ him were it not for the aforesaid acts, inducements, persuasions, threats, molestations, and hindrances of the said defendants; whereby and by reason of which said plaintiff has been greatly damaged by the wrongful acts of the said defendants, all of which is to the damage of the plaintiff, as he says, in the sum of one thousand dollars.¹⁰

Form No. 11.—*Complaint based on Section 7 of Sherman Anti-trust Act to recover threefold damages for violation of act by boycott.*

The complaint alleged that the defendants were residents of the district of Connecticut and that complainants resided in Danbury, in that district, were co-partners, and located and doing business as manufacturers and sellers of hats there; that they had “a factory for the making of hats, for sale by them in the various states of the Union, and have for many years employed, at said factory, a large number of men in the manufacture and sale of said hats, and have invested in that branch of their business a large amount of capital, and, in their business of selling the product of their factory and filling orders for said hats, have built up and established a large interstate trade, employing more than two hundred and thirty (230) persons in making and annually selling hats of a value exceeding four hundred thousand (\$400,000) dollars.

“4. The plaintiffs deeming it their right to manage and conduct their business without interference from individuals or associations not connected therewith, have for many years maintained the policy of refusing to suffer or permit any person or organization to direct or control their said business, and, in consequence of said policy, have conducted their said business upon the broad and patriotic principle of not discriminating against any person seeking employment because of his being or not being connected with any labor or other organization, and have refused to enter into agreement with any person or organization whereby the rights and privileges, either of themselves or any employee, would be jeopardized, surrendered to, or controlled by, said person or organization, and

¹⁰ Perkins v Pendleton, 90 Me. 166, 38 Atl. 96, 60 Am. St. Rep. 252.

have believed said policy, which was and is well known to the defendants, to be absolutely necessary to the successful conduct of their said business and the welfare of their employees.

"5. The plaintiffs, for many years, have been and are now, engaged in trade and commerce among the several states of the Union in selling and shipping almost the whole of the product of their said factory by common carriers, from said Danbury to wholesale dealers residing and doing business in each of the states of Maine, Massachusetts, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Virginia, Ohio, Illinois, Michigan, Wisconsin, Missouri, Nebraska, Arkansas, California, and other states, to the amount of many hundreds of thousands of dollars, and in sending agents with samples from said Danbury into and through each of said states to visit said wholesale dealers at their places of business in said several states, and solicit and procure from them orders for said hats, to be filled by hats to be shipped from their said factory at said Danbury, by common carriers, to said wholesale dealers, to be by them paid for after the delivery thereof at their several places of business.

"6. On July 25, 1902, the amount of capital invested by the plaintiffs in said business of making and selling hats approximated \$130,000, and the value of the hats annually sold and shipped by them in previous years, to said dealers in states other than Connecticut, exceeded \$400,000, while the value of hats sold by them in the state of Connecticut did not exceed \$10,000.

"7 On July 25, 1902, the plaintiffs had made preparations to do a large and profitable business with said wholesale dealers in other states, and the conditions of their business was such as to warrant the full belief that the ensuing year would be the most successful in their experience. Their factory was then running to its full capacity in filling a large number of orders from such wholesale dealers in other states. They were then employing about 160 men in the making and finishing departments, a large number in the trimming and other departments, whose work was dependent upon the previous work of the makers and finishers, and they then had about 150 dozens of hats in process of manufacture, and in such condition as to be perishable and ruined if work was stopped upon them.

"8. The plaintiffs then were and now are almost wholly dependent upon the sale and shipments of hats as aforesaid, to said dealers in states other than Connecticut, to keep their said factory running and to dispose of its product and their capital in said business pro-

fitably employed, and the restraint, curtailment, and destruction of their said trade and commerce with their said customers in said states other than Connecticut, by the combination, conspiracy, and acts of the defendants, as hereinafter set forth, have been and now are of serious damage to the property and business of the plaintiffs, as hereinafter set forth.

“9. The individual defendants, named in this writ, are all members of a combination or association of persons, styling themselves the United Hatters of North America, and said combination includes more than 9,000 persons, residing in the several states of Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Indiana, Illinois, Missouri, California, and the Province of Ontario in the Dominion of Canada. The said combination is subdivided into 20 sub-combinations, each of which is by themselves styled a local union of the United Hatters of North America. Six of said sub-combinations are in the state of Connecticut, and known as local Unions 1 and 2, 10 and 11, and 15 and 16 of the United Hatters of North America, and have an aggregate membership of more than 3,000 persons residing in the state of Connecticut.

“10. Said combination of persons, collectively known as the United Hatters of North America, owns, controls, edits, publishes, and issues a paper styled the Journal of the United Hatters of North America, in which are published reports of many of the acts of its agents, hereinafter mentioned, which circulates widely among its members and the public, and which affords a ready, convenient, powerful, and effective vehicle for the dissemination of information to its members and the public as to boycotts declared and pushed by them, and of the acts and measures of its members and agents for carrying such boycotts into effect, and was so used by them in connection with the acts of the defendants hereinafter set forth.

“11. Said combination owns and absolutely controls the use of a certain label or distinguishing mark, which it styles the Union Label of the United Hatters of North America, which mark, when so used by them, affords to them a ready, convenient, and effective instrument and means of boycotting the hats of any manufacturer against whom they may desire to use it for that purpose.

“12. The defendants in this suit are also all members of a combination or association of persons calling themselves and known as the American Federation of Labor, which includes more than 1,400,000 members residing in the several states and territories of

the Union, and in the Dominion of Canada, and in all the places in the several states where the wholesale dealers in hats, hereinbefore mentioned, and their customers, reside and do business. Said combination is subdivided in subordinate groups, or combinations, comprising 110 national and international unions and combinations, of which the said combination of persons styling themselves the United Hatters of North America is one, composed of 12,000 local unions, 28 state federations or combinations, more than 500 central labor unions or combinations, and more than 2,000 local unions or combinations, which are not included in the above-mentioned national and international combinations.

“13. Said combination of persons collectively known as the American Federation of Labor owns, controls, edits, publishes, and issues a paper or magazine called the American Federationist, which it declares to be its official organ and mouthpiece, which has a very wide circulation among its members and others, and which affords a ready, convenient, powerful, and effective vehicle and instrument for the dissemination of information, as to persons, their products and manufactures, boycotted or to be boycotted, by its members, and as to measures adopted and statements to be published, detrimental to such persons and to the sale of their manufactures, and for boycotting such persons, their manufactures, and said paper has been and now is constantly used, printed and distributed for said purposes among its members and the public, and was so used by the defendants and their confederates in boycotting the products of the firm of F. Berg & Company, of Orange, New Jersey, and H. H. Roelofs & Company of Philadelphia, Pennsylvania, hat manufacturers, to their very great injury, and until the said firms successively yielded to their demands in pursuance of the general scheme of the defendant, hereinafter set forth.

“14. The persons united in said combination, known as the American Federation of Labor, including the persons in said sub-combination known as the United Hatters of North America, constantly employ more than 1,000 agents in the states and territories of the United States, to push, enforce, and carry into effect all boycotts declared by the said members, including those in aid of the combined scheme, purpose, and effort hereinafter stated, to force all the manufacturers of fur hats in the United States, including the plaintiffs, to unionize their factories by restraining and destroying their interstate trade and commerce, as hereinafter

stated, all of which said agents act under the immediate supervision and personal direction of one Samuel Gompers, who is chief agent of the said combination of persons for said purpose, and of each of the said combinations, and the said agents make monthly reports of their doings in pushing and enforcing, and causing to be pushed and enforced, said boycotts, and publish the same monthly in said paper known as the American Federationist, of which he is the editor, appointed by the said members, which said paper, in connection with said statement or summary, is declared to be the authorized and official mouthpiece of each of said subcombinations, including the said United Hatters of North America. Said statement is declared by the defendants to be a faithful record of the doing of said agents, and each of said statements, made during the period covered by the acts of the defendants against the plaintiffs herein stated, contains the announcement to the members of said combination and the public, that all boycotts declared by them are being by them and their agents pushed, enforced, and observed.

“15. Said combination of persons collectively known as the American Federation of Labor, of which the defendants are members, was, by the defendants and their other members, formed for the purpose, among others, of facilitating the declaration and successful maintenance of boycotts, by and for said combination of persons known as the United Hatters of North America, acting through the said Federation of Labor and its other component parts or members, and it and its component parts have frequently declared boycotts, at the request of the defendants, against the business and product of various hat manufacturers, and have vigorously prosecuted the same by and through the powerful machinery at their command as aforesaid, in carrying out their general scheme herein stated, to the great damage and loss of business of said manufacturers, and particularly during the years of 1901 and 1902, they declared, prosecuted, and waged, at the request of the defendants and their agents, a boycott against the hats made by and the business of H. H. Roelofs & Company, of Philadelphia, Pennsylvania, until, by causing them great damage and loss of business, they coerced them into yielding to the demand of the defendants and their agents, that the said factory of said Roelofs & Company be unionized, as termed by the defendants, and into agreeing to employ, and employing exclusively, members of their said combination in the making and finishing departments of said

factory, and in large measure surrendering to the defendants and their agents the control of said factory and business, all of which was well known to the plaintiffs, their customers, wholesale dealers, and the public, and was, by the defendants and their agents, widely proclaimed through all their agencies above mentioned, in connection with their acts against the plaintiffs, as herein set forth, for the purpose of intimidating and coercing said wholesale dealers and their customers from buying the hats of the plaintiffs, by creating in their minds the fear that the defendants would invoke and put into operation against them all said powerful means, measures, and machinery, if they should handle the hats of the plaintiffs.

“16. The defendants, together with the other persons united with them in said combination, known as the United Hatters of North America, have been for many years, and now are, engaged in a combined scheme and effort to force all manufacturers of fur hats in the United States, including the plaintiffs, against their will and their previous policy of carrying on their business, to organize their workmen in the departments of making and finishing, in each of their factories, into an organization, to be part and parcel of the said combination known as the United Hatters of North America, or, as the defendants and their confederates term it, to unionize their shops, with the intent thereby to control the employment of labor in and the operation of said factories, and to subject the same to the direction and control of persons other than the owners of the same, in a manner extremely onerous and distasteful to such owners, and to carry out such scheme, effort, and purpose by restraining and destroying the interstate trade and commerce of such manufacturers by means of intimidation of and threats made to such manufacturers and their customers in the several states, of boycotting them, their product, and their customers, using therefor all the powerful means at their command as aforesaid, until such time as, from the damage and loss of business resulting therefrom, the said manufacturers should yield to the said demand to unionize their factories.

“17. The defendants and other members of said United Hatters of North America, acting with them and in pursuance of said general combined scheme and purpose, and in carrying the same into effect against said manufacturers, including the plaintiffs, and by use of the means above stated, and the fear thereof, have, within a

very few years, forced the following named manufacturers of hats in the United States to yield to their demand, and unionize their factories, viz.: [Here follow 70 names of corporations and individuals]; and until there remained, according to the statements of the defendants, only 12 hat factories in the United States which had not submitted to their said demands, and the defendants, in pursuing their warfare against the plaintiffs, as hereinafter set forth, and in connection with their said acts against them, have made public announcement of that fact and of the firms so coerced by them, in order thereby to increase the effectiveness of their acts in intimidating said wholesale dealers and their customers in states other than Connecticut, from buying hats from plaintiffs, as hereinafter set forth.

“18. To carry out said scheme and purpose, the defendants have appointed and employed, and do steadily employ, certain special agents to act in their behalf, with full and express authority from them and the other members of said combination, and under explicit instructions from them, to use every means in their power to compel all such manufacturers of hats to so unionize their factories, and each and all of the defendants in this suit did the several acts hereinafter stated, either by themselves or their agents, by them thereto fully authorized.

“19. On or about March 1, 1901, in pursuance of said general scheme and purpose, the defendants and the other members of said combination, the United Hatters of North America, through their agents, the said John A. Moffit, Martin Lawlor, John Phillips, James P. Maher, and Charles J. Barrett, who acted for themselves and the other defendants, demanded of the plaintiffs that they should unionize their said factory, in the making and finishing departments, and also thereby acquire the right to use and use the said Union label, subject to the right of the defendants to recall the same at pleasure, in all hats made by them, and then notified the plaintiffs that, if they failed to yield to said demand, the defendants and all the other members of the said combination known as the United Hatters of North America would resort to their said usual and well-known methods to compel them so to do. After several conferences, and in April, 1901, the plaintiffs replied to the said demand of the defendants as follows:

“ ‘Firmly believing that we are acting for the best interests of our firm, for the best interests of those whom we employ, and for

the best interests of Danbury, by operating an independent or open factory, we hereby notify you that we decline to have our shop unionized, and, if attacked, shall use all lawful means to protect our business interests.'

"The plaintiffs were then employing many union and non-union men, and their said factory was running smoothly and satisfactory both to the plaintiffs and their employees. The defendants, their confederates and agents, deferred the execution of their said threat against the plaintiffs until the conclusion of their attack made in pursuance of the same general scheme and purpose against H. H. Roelofs & Company, which resulted in the surrender of Roelofs & Company on July 15, 1902, except that the defendants, their confederates and agents, in November, 1901, caused the said American Federation of Labor to declare a boycott against any dealer or dealers who should handle the products of the plaintiffs.

"20. On or about July 25, 1902, the defendants, individually and collectively, and as members of said combinations and associations, and with other persons whose names are unknown to the plaintiffs, associated with them, in pursuance of the general scheme and purpose aforesaid, to force all manufacturers of fur hats, and particularly the plaintiffs, to so unionize their factories, wantonly, wrongfully, maliciously, unlawfully, and in violation of the provisions of the 'act of Congress approved July 2, 1890, [26 Stat. at L. 209, chap. 647, U. S. Comp. Stat. 1901, p. 3200], and entitled 'An Act to protect Trade and Commerce Against Unlawful Restraints and Monopolies,' and with intent to injure the property and business of the plaintiffs by means of acts done which are forbidden and declared to be unlawful by said act of Congress, entered into a combination and conspiracy to restrain the plaintiffs and their customers in states other than Connecticut, in carrying on said trade and commerce among the several states, and to wholly prevent them from engaging in and carrying on said trade and commerce between them, and to prevent the plaintiffs from selling their hats to wholesale dealers and purchasers in said states other than Connecticut, and to prevent said dealers and customers in said other states from buying the same, and to prevent the plaintiffs from obtaining orders for their hats from such customers, and filling the same, and shipping said hats to said customers in said states as aforesaid, and thereby injure the plaintiffs in their property and business, and to render unsalable the product and output

of their said factory, as the subject of interstate commerce, in whosoever's hands the same might be or come, through said interstate trade and commerce, or employ as means to carry out said combination and conspiracy and the purposes thereof, and accomplish the same, the following measures and acts, viz.:

"To cause, by means of threats and coercion, and without warning or information to the plaintiffs, the concerted and simultaneous withdrawal of all the makers and finishers of hats then working for them, who were not members of their said combination, the United Hatters of North America, as well as those who were such members, and thereby cripple the operation of the plaintiffs' factory, and prevent the plaintiffs from filling a large number of orders then on hand, from such wholesale dealers in states other than Connecticut, which they had engaged to fill and were then in the act of filling, as was well known to the defendants; in connection therewith to declare a boycott against all hats made for sale and sold and delivered, or to be sold or delivered, by the plaintiffs to said wholesale dealers in states other than Connecticut, and to actively boycott the same and the business of those who should deal in them, and thereby prevent the sale of the same by those in whose hands they might be or come through said interstate trade in said several states; to procure and cause others of said combinations united with them in said American Federation of Labor, in like manner to declare a boycott against and to actively boycott the same and the business of such wholesale dealers as should buy or sell them, and of those who should purchase them from such wholesale dealers; to intimidate such wholesale dealers from purchasing or dealing in the hats of the plaintiff by informing them that the American Federation of Labor had declared a boycott against the product of the plaintiffs and against any dealer who should handle it, and that the same was to be actively pressed against them, and by distributing circulars containing notices that such dealers and their customers were to be boycotted; to threaten with a boycott those customers who should buy any goods whatever, even though union-made, of such boycotted dealers, and at the same time to notify such wholesale dealers that they were at liberty to deal in the hats of any other non-union manufacturer of similar quality to those made by the plaintiffs, but must not deal in the hats made by the plaintiffs under threats of such boycotting; to falsely represent to said wholesale dealers and their customers,

that the plaintiffs had discriminated against the union men in their employ, had thrown them out of employment because they refused to give up their union cards and teach boys, who were intended to take their places after seven months' instruction, and had driven their employes to extreme measures 'by their persistent, unfair, and un-American policy of antagonizing union labor, forcing wages to a starvation scale, and given boys and cheap, unskilled foreign labor preference over experienced and capable union workmen,' in order to intimidate said dealers from purchasing said hats by reason of the prejudice thereby created against the plaintiffs and the hats made by them among those who might otherwise purchase them; to use the said union label of said the United Hatters of North America as an instrument to aid them in carrying out said conspiracy and combination against the plaintiffs' and their customers' interstate trade aforesaid, and, in connection with the boycotting above mentioned, for the purpose of describing and identifying the hats of the plaintiffs, and singling them out to be so boycotted; to employ a large number of agents to visit said wholesale dealers and their customers, at their several places of business, and threaten them with loss of business if they should buy or handle the hats of the plaintiffs, and thereby prevent them from buying said hats, and, in connection therewith, to cause said dealers to be waited upon by committees representing large combinations of persons in their several localities to make similar threats to them; to use the daily press in the localities where such wholesale dealers reside and do business, to announce and advertise the said boycotts against the hats of the plaintiffs and said wholesale dealers, and thereby make the same more effective and oppressive, and to use the columns of their said paper, the Journal of the United Hatters of North America, for that purpose, and to describe the acts of their said agents in prosecuting the same.

"21. Afterwards, to wit, on July 25, 1902, and on divers days since hitherto, the defendants, in pursuance of said combination and conspiracy, and to carry the same into effect, did cause the concerted and simultaneous withdrawal, by means of threats and coercion made by them, and without previous warning or information thereof to the plaintiffs, of all but 10 of the non-union makers and finishers of hats then working for them, as well as all of their union makers and finishers, leaving large numbers of hats in an unfinished and perishable condition, with intent to cripple, and

did thereby cripple, the operation of the plaintiffs' factory until the latter part of October, 1902, and thereby prevented the plaintiffs from filling a large number of orders then on hand from such wholesale dealers in states other than Connecticut, which they had engaged to fill, and were then in the act of filling, as well known to the defendants, and thereby caused the loss to the plaintiffs of many orders from said wholesale dealers in other states, and greatly hindered and delayed them in filling such orders, and falsely representing to said wholesale dealers, their customers, and the public generally in states other than Connecticut, that the plaintiffs had discriminated against the union men in their employ, and had discharged or thrown out of employment their union men in August, 1902; that they had driven their employes to extreme measures by their persistent, unfair, and un-American policy of antagonizing union labor, forcing wages down to a starvation scale, and giving boys and cheap, unskilled foreign labor preference over experienced and capable workmen; that skilled hatters had been discharged from said factory for no other cause than their devotion and adherence to the principles of organized labor in refusing to give up their union cards, and to teach the trade to boys who were intended to take the place of union workmen after seven months' instruction, and that, unable to submit longer to a system of petty tyrannies that might be tolerated in Siberia, but could not be borne by independent Americans, the workmen in the factory inaugurated the strike to compel the firm to recognize their rights, in order to prejudice, and did thereby prejudice, the public against the plaintiffs and their product, and in order to intimidate, and did thereby intimidate, said wholesale dealers and their customers, in states other than Connecticut, from purchasing hats from the plaintiffs by reason of the fear of the prejudice created against said hats; and, in connection therewith, declared a boycott against all hats made for and so sold and delivered, and to be so sold and delivered to said wholesale dealers, in states other than Connecticut, and actively boycotted the same and the business of those who dealt in them in such other states, and thereby restrained and prevented the purchase of the same from the plaintiffs, and the sale of the same by those in whose hands they were, or might thereafter be, in the course of such interstate trade, and caused and procured others of said combinations united with them in the said American Federation of Labor to declare a boycott against the plaintiffs,

their product, and against the business of such wholesale dealers in states other than Connecticut, as should buy or sell them, and of those who should purchase from such wholesale dealers any goods whatever, and further intimidated said wholesale dealers from purchasing or dealing in hats made by the plaintiffs, as aforesaid, by informing them that the American Federation of Labor had declared a boycott against the hats of the plaintiffs and against any dealer who should handle them, and that said boycott was to be actively pressed against them, and by sending agents and committees from various of said labor organizations, to threaten said wholesale dealers and their customers with a boycott from them if they purchased or handled the goods of plaintiffs, and by distributing in San Francisco, California, and other places, circulars containing notices that such dealers and their customers were to be boycotted, and threatened with a boycott, and did actively boycott the customers who did or should buy any goods whatever, even though union-made, of such wholesale dealers so boycotted, and used the daily press to advertise and announce said boycott and the measures taken in pursuance thereof by said labor organizations, particularly the San Francisco Bulletin, in its issues of July 3 and July 4, 1903, and a daily paper published in Richmond, Virginia, on December 10, 1902, and notified such wholesale dealers in states other than Connecticut, that they were at liberty to deal in the hats of any other non-union hat manufacturer of similar quality to those of the plaintiffs, but they must not deal in hats made by the plaintiffs, under threats of being boycotted for so doing, and used the said union label of the United Hatters of North America as an instrument to aid them in carrying out said combination and conspiracy against the plaintiffs' and their customers' interstate trade, as aforesaid, and, in connection with such boycotting, by using the same and its absence from the hats of the plaintiffs, as an insignia or device to indicate to the purchaser that the hats of the plaintiffs were to be boycotted, and to point them out for that purpose, and employed a large number of agents to visit said wholesale dealers and their customers at their several places of business in each of said states, particularly Philadelphia and other places in the state of Pennsylvania, in Baltimore, in the state of Maryland, in Richmond and other places in the state of Virginia, and in San Francisco and other places in the

state of California, to intimidate and threaten them, if they should continue to deal in or handle the hats of the plaintiffs, and, among many other instances of like kind, the said William C. Hennelly and Daniel P. Kelly, in behalf of all said defendants, and acting for them, demanded the firm of Triest & Company, wholesale dealers in hats, doing business in said San Francisco, that they should agree not to buy or deal in the hats made by the plaintiffs, under threats made by them to said firm of boycotting their business and that of their customers, and, upon their refusing to comply with such demand and yield to such threats, the defendants, by their said agents, caused announcement to be made in the newspapers of said city that said Triest & Company were to be boycotted therefore, and that the labor council of San Francisco would be addressed by them for that purpose, and that they had procured a boycott to be declared by said labor council, and thereupon the defendants, through their said agents, Hennelly and Kelly, printed, published, issued, and distributed to the retail dealers in hats, in several states upon the Pacific coast, the following circular, to wit:

“San Francisco Labor Council,
Affiliated with the American Federation of Labor,
Secretary's Office, 927 Market street,
Rooms 405, 406, 407 Emma Spreckel's Building.

Meets every Friday, at 1159 Mission street.

“Telephone, South, 447.

“Address all communications to 927 Market street.

“San Francisco, July 3, 1903.

“To whom it may concern:

“At a special meeting of the San Francisco Labor Council held on the above date, the hat-jobbing concern known as Triest & Company, 116 Sansome street, San Francisco, was declared unfair for persistently patronizing the unfair hat-manufacturing concern of D. E. Loewe & Company, Danbury, Connecticut, where the union hatters have been on strike, for union conditions, since August 20, 1902. Triest & Company will be retained on the unfair list as long as they handle the product of this unfair hat manufacturing concern. Union men do not usually patronize retail stores who buy from unfair jobbing houses or manufacturers. Under these circumstances, all friends of organized labor, and those desiring

the patronage of organized workers, will not buy goods from Triest & Company, 116 Sansome street, San Francisco.

"Yours respectfully,

"G. B. BENHAM, President S. F. Labor Council.

"T. E. ZANT, Secretary S. F. Labor Council. [L. S.]

"W. C. HENNELLY,

"D. F. KELLEY,

"Representing United Hatters of North America."

"Also the following, to wit:

"San Francisco Labor Council,
Affiliated with the American Federation of Labor,
Secretary's Office, 927 Market street,
Rooms 405, 406, 407 Emma Spreckel's Building.
Meets every Friday, at 1159 Mission street.

"Telephone, South, 447.

"Address all communications to 927 Market street.

San Francisco, July 14, 1903.

"Messrs. _____.

"Gentlemen:—

"We beg leave to call your attention to the following products which are on the unfair list of the American Federation of Labor.

"We do this in order that you refrain from handling these goods, as the patronage of the firms named below is taken by the organized workers as an evidence of a desire to patronize those who are opposed to the interests of organized labor. The declaration of unfairness regarding the firms mentioned is fully sanctioned and will be supported to the fullest degree by the San Francisco Labor Council.

"Trusting that you will be able to avoid the handling of these goods in the future, we are,

"Yours respectfully,

"G. B. BENHAM, *President*.

"T. E. ZANT, Secretary. [L. S.]

"UNFAIR LIST.

"Loewe & Company, Danbury, Connecticut, and Triest & Company, 116 Sansome street, San Francisco, hat manufacturers.

"Cluett, Peabody & Company, shirts and collars, Troy, New York, and 562 Mission street, San Francisco, California.

“United Shirt & Collar Company, Troy, New York, and 25 Sansome street, San Francisco, California.

“Van Zandt, Jacobs & Company, Troy, New York; Greenbaum, Weil & Michaels, selling agents, 27 Sansome street, San Francisco, California.”

“and caused said circulars to be mailed to and personally delivered to the retail dealers in hats, and the other customers of said Triest & Company, upon the Pacific coast, and to many others, thereby causing the loss of many orders and customers to said Triest & Company and to the plaintiffs, for the purpose of intimidating and coercing said Triest & Company not to deal with the plaintiffs, and thereby cause the loss of many orders and customers to said Triest & Company and to the plaintiffs.

“22. By means of each and all of said acts done by the defendants in pursuance of said combination and conspiracy, they have greatly restrained, diminished, and, in many places, destroyed the trade and commerce of the plaintiffs with said wholesale dealers, in said states other than Connecticut, by the loss of many orders and customers directly resulting therefrom, and the plaintiffs have been injured in their business and property by reason of said combination and conspiracy, and the acts of the defendants done in pursuance thereof, and to carry the same into effect, which are declared to be unlawful by said act of Congress, to the amount of eighty thousand (\$80,000) dollars, to recover threefold which damages, under section 7 of said act, this suit is brought.”¹¹

Form No. 12.—*Petition asking reinstatement to union, the setting aside of a fine imposed on petitioner, and for damages.*

The petition of _____, of full age, and residing in the city of New Orleans, state of Louisiana, with respect shows:

That your petitioner has been a member of Local Union No. 60 (in this city), of the United Association Journeymen Plumbers, Gas Fitters, Steam Fitters and Steam Fitters' Helpers of the United States and Canada, and that as such he has regularly paid his dues and been a consistent and faithful member, at all times promoting the interests of said union; that the Legislature of the State of Louisiana in session of 1902 adopted Act Number 194

¹¹ *Loewe v Lawlor*, 208 U. S. 274, 28 Sup. Ct. 301, 52 L. ed. 488.

creating Boards of Examiners of Plumbers and defining their duties, that in pursuance to the provisions of said act the mayor of the city of New Orleans named three master plumbers and two journeymen plumbers, one of whom was petitioner, to constitute said Board of Examiners of Plumbers for the city of New Orleans, that said Board after the appointment of the members thereof, duly organized on August 28, 1903, that at said meeting a plumbing inspector for the city of New Orleans was elected, that thereafter, to wit, at the meeting of said local union No. 60 held August 27, 1903, a resolution was adopted imposing upon petitioner a fine of \$25.00 with the privilege of raising same to \$150 upon approval thereof by the United Association and at the same time instructing the other members of said Union to refrain from working with petitioner under penalty of fines.

That on the 28th day of August, 1903, when petitioner reported for work at his place of employment he was informed by his employer that the representative of the Union in said employers' shop, had notified said employer that petitioner had been fined and suspended and the other employes in said shop were prohibited from working with petitioner.

That by reason of the action of said Union, petitioner was prevented from working from that day forward; that he was never furnished with a copy of any charges against him nor was petitioner ever tried on any charges, nor summoned before said union to answer on any charges, notwithstanding that petitioner had repeatedly requested in writing that he be furnished with a copy of any charges or complaints that might be urged against him.

That petitioner attempted to have special meetings called for the purpose of taking action in his case, furnishing him with charges and giving him an opportunity to be heard thereon; that the request for these meetings were signed by the requisite number of members as provided in the By-laws; that, notwithstanding this, the officers charged with said duties refused to call said meeting; that petitioner likewise appealed to the United Association for redress; that his communications and appeals remained unheeded, to extent of affording petitioner any relief.

That petitioner having no other means of subsistence except by his daily labor of journeyman plumber, gave an order, under protest to Walter Correjoller, the representative of said Union in the shop with petitioner, for the reason that petitioner had despaired

of receiving any aid from the United Association, pending action on petitioner's case; that under these conditions petitioner worked two days, namely, on September 12th and 14th, and that thereupon a special meeting of said Local Union No. 60 was called and resolutions were adopted, as petitioner was informed, imposing a fine of seven dollars on each and every member of said union working for petitioner's employer, and prohibiting them from working with petitioner under the penalty of increasing said fine to \$25.00 if they persisted in working with petitioner, and instructing the Union's representative, Mr. Mitchell, shop-steward to return petitioner's order for \$25.00.

That in consequence thereof petitioner was compelled to desist from work.

That petitioner has not in any way violated the By-Laws or Constitution of Local Union No. 60, or of the United Association, but avers that said Union No. 60, and the officers thereof, *William McGilvray, President; Lionel De Leon, Vice-President; August Knaebles, Financial Secretary-Treasurer; Peter Llibert, Recording Secretary; Thomas McDonough, Past President, and the following members, Jos. A. Gleason, William Donovan, A. G. Gelistan, Silas Sutherland, Frank Robinson, Forbes I. Kidd, William O'Brien, Fred J. Porto and Joseph Jordan*, have acted illegally and maliciously and in violation of the Constitution and By-laws; that the fine and suspension of petitioner is contrary to law, public policy and to the Constitution and By-laws of said Local Union No. 60 and said United Association.

Petitioner shows that the value of membership in Local Union No. 60 is worth to petitioner, the sum of \$5,000.

Your petitioner avers and charges that the object of said fine and suspension is to injure petitioner and prevent his making a living in his business of journeyman plumber.

That by reason of the illegal acts of said defendants, petitioner has been prevented from earning from August 27, 1903, to September 11th inclusive, and from September 15th to 30th, both inclusive, \$5.50 per day, and from October 1st to date of filing this petition, both inclusive, the sum of \$4.00 per working day, amounting to two hundred and fifty-one dollars (\$251.00), together with such further sums as petitioner might have earned until determination of this litigation.

Your petitioner has not been able to ascertain if the said Local

Union No. 16, is incorporated but that the officers of said Association are William McGilvray, President; Lionel De Leon, Vice-President; August Knaebel, Financial Secretary-Treasurer; Peter Llibert, Recording Secretary, Thomas McDonough, Past President, all whom constitute the Executive Board of said Union.

Petitioner further shows that the acts of said Local Union, its aforesaid officers and said members thereof, Joseph A. Gleason, William Donegan, A. G. Celistan, Silas Sutherland, Frank Robinson, Forbes I. Kidd, William O'Brien, Fred J. Forto, Joseph Jordan, are unwarrantable in law and have caused damage to petitioner's feeling and reputation and for said mental pain and suffering, he is entitled to recover from them the sum of \$2500.00 as damages; that petitioner is also entitled to the sum of \$2500.00 as punitive and exemplary damages; that unless your petitioner is reinstated, and unless the officers and members of the said Local Union No. 60 are enjoined and prevented from continuing a boycott against your petitioner and from discouraging the other members from working with petitioner, your petitioner will be unable to make a living in his business as journeyman plumber.

Your petitioner shows that the said illegal acts already perpetrated and further threatened by defendants, have caused and will continue to cause your petitioner irreparable injury.

Your petitioner shows that writs of injunction are necessary herein to protect your petitioner's interest; wherefore the premises considered, also the petition, annexed bond and affidavit considered, petitioner prays that Local Union No. 60, through its proper officers, and William McGilvray, President; Lionel De Leon, Vice-President; August Knaebel, Financial Secretary-Treasurer, Peter Llibert, Recording Secretary; Thomas McDonough, Past President, and the following members thereof, Joseph A. Gleason, William Donegan, A. G. Gelistan, Silas Sutherland, Frank Robinson, Forbes I. Kidd, William O'Brien, Fred J. Forto and Joseph Jordan, be duly cited to appear and ordered to answer hereto, and your petitioner prays that the said Local Union No. 60, through its proper officers, and William McGilvray, President; Lionel De Leon, Vice-President; August Knaebel, Financial Secretary-Treasurer, Peter Llibert, Secretary; Thomas McDonough, Past President, and the following members thereof, Joseph A. Gleason, William Donegan, A. G. Gelistan, Silas Sutherland, Frank Robinson, Forbes I. Kidd, William O'Brien, Fred J. Forto, and Joseph Jordan and other

persons concerned with the said Local Union No. 60 may be enjoined from interfering with your petitioner in the conduct of his business and from discouraging and interfering with any person working with your petitioner, or employing your petitioner or others working with petitioner, whether by threats or force, or otherwise, and that petitioner be reinstated in said Local Union No. 60, and the aforesaid fine of \$25.00 set aside and annulled and maintaining and perpetuating the writ of injunction herein issued, after due and legal proceedings had, there be judgment in favor of petitioner and against Local Union No. 60 and William McGilvray, President; Lionel De Leon, Vice-President; August Knaeble, Financial Secretary-Treasurer; Peter Llibert, Recording Secretary; Thomas McDonough, Past President, and the following members, Jos. A. Gleason, William Donovan, A. G. Gelistan, Silas Sutherland, Frank Robinson, Forbes I. Kidd, William O'Brien, Fred J. Forto, and Joseph Jordan, in solido, for the full sum of five thousand two hundred and fifty-one dollars (\$5,251.00), damages as hereinabove set forth, and for all costs and general relief.¹²

Form No. 13.—*Complaint by expelled member to compel reinstatement to membership.*

The complaint of the plaintiff, by his attorneys, respectfully shows:

1. That the plaintiff is a resident of the village of Port Jervis, in the County of Orange and State of New York.

2. That Port Jervis Division, No. 54, of the Grand International Brotherhood of Locomotive Engineers is an unincorporated association, consisting of more than seven persons, and located and having its principal office for the transaction of business in the village of Port Jervis aforesaid, and that John Knaub resides in said village and is the Second Assistant Engineer of said Division and as such Second Assistant Engineer is, by the constitution, statutes and rules of the Grand International Brotherhood of Locomotive Engineers, invested with the functions and performs the duties of treasurer of said Port Jervis Division and is the treasurer of said Division.

¹² *Schneider v Local Union No. 60*, 116 La. 270, 40 So. 700, 114 Am. St. Rep. 549, 5 L. R. A. N. S. 891. This petition was drafted by Martin H. Manion of the New Orleans bar, counsel for plaintiffs. The author is under obligations to him for a copy thereof herein set out.

3. That for many years prior to the 11th day of October, 1904, plaintiff was a member in good standing of Port Jervis Division, No. 54, of said Brotherhood, and that on the 11th day of October, 1904, said Division wrongfully and unlawfully expelled the plaintiff from membership therein.

That thereafter and on or about the 20th day of October, 1904, plaintiff duly appealed to the Grand Chief Engineer of said Brotherhood from the said decision and action of said Port Jervis Division No. 54, in expelling plaintiff, and that on or about the 29th day of November, 1904, said Grand Chief Engineer rendered a decision sustaining the same.

4. That the expulsion of the plaintiff from said Division was wrongful, unlawful, invalid and void, in that plaintiff was not accorded a fair, proper or legal trial, that the officer conducting or presiding over the so-called trial was not impartial but by reason of prejudice, bias and interest, was disqualified from conducting or presiding over the same. That the so-called trial was not conducted in conformity with the constitution, statutes and rules of said Brotherhood, that improper evidence was admitted, that no sufficient evidence to warrant the expulsion of your plaintiff was adduced, that no adequate or sufficient charges were preferred against plaintiff, that a majority of the members present at said so-called trial did not vote for plaintiff's expulsion, as plaintiff is informed and believes, and that the proceedings preliminary to and upon such alleged trial were irregularly conducted, without due authority, and without sufficient cause or proper notice.

5. The plaintiff further shows and alleges that he is a member of the Locomotive Engineer's Mutual Life and Accident Insurance Association, and is the owner of and holds three policies of insurance therein for the payment of the sum of fifteen hundred dollars each to plaintiff's wife upon his death, and also for the payment of certain benefits thereby provided for to the plaintiff in case of injury or sickness.

That it is provided by the constitution and by-laws of said Insurance Association that no person shall be eligible to or hold any office in the association, and that no person shall become a member or retain his membership therein unless he is a member in good standing of the Brotherhood of Locomotive Engineers, and it is further provided in and by said by-laws and the policies of insurance issued to plaintiff that any member being expelled from the

Brotherhood of Locomotive Engineers, unless reinstated within one year shall forfeit all right and title to membership, and be debarred from further participation in the insurance or benefits arising from the same.

6. And plaintiff further shows and alleges that by the terms of said by-laws and policies, his membership in said Insurance Association will be forfeited and he will be debarred from participation in said insurance or benefits arising therefrom unless he is reinstated to membership in said Brotherhood of Locomotive Engineers by the 11th day of October, 1905; that an appeal to the Grand International Division of said Brotherhood from the decision or action expelling plaintiff is without avail to him for the reason that a meeting of the Grand International Division has not been held since plaintiff's so-called expulsion and will not be held prior to the second Wednesday in May, 1906, and that pending such appeal irreparable injury to the interests, property and rights of the plaintiff would result by reason of the delay ensuing before such appeal could be heard and determined, and that plaintiff has, therefore, no adequate or sufficient remedy other than the proceeding hereby instituted, for the redress of the grievances herein complained of and for the preservation and protection of his rights, interest and property.

7. And plaintiff further shows and avers that by reason of the matters hereinbefore set forth, he has been and is wrongfully and unlawfully deprived of and prevented from exercising and enjoying his rights and privileges as a member of Port Jervis Division, No. 54, of the Grand International Brotherhood of Locomotive Engineers, and that important and valuable interests and property rights vested in plaintiff are threatened and endangered and will be forfeited and destroyed unless the said wrongful and illegal acts and proceedings herein complained of be annulled and set aside.

Wherefore, plaintiff prays the judgment and decree of this court declaring the resolution of expulsion of the plaintiff to have been adopted without legal authority and to be inoperative and void as to the plaintiff, and restraining the enforcement of it by the officers or members of said Port Jervis Division No. 54, against him, and requiring said officers and members forthwith to reinstate plaintiff in all his rights and privileges and recognize plaintiff as a member of said Division; and that plaintiff have such other or

further order or relief in the premises as may be equitable and just and agreeable to good conscience.¹³

Form No. 14.—*Bill to enjoin infringement of union label framed on theory that label entitled to protection though not a technical trade-mark.*

The plaintiffs, P. J. Powers, Louis J. Keiffer and Joseph Wopprice state that they are members of the above named Cigar Makers' International Union of America and of the Cigar Makers' Protective Union No. 32; that the questions and rights in this action presented, and which they seek to have decided herein involve a general or common interest of many thousands of persons. That the said Cigar Makers' International Union of America is an organization and association of which more than twenty-five thousand men are members and said Cigar Makers' Protective Union No. 32 has more than 200 members, each and all of whom are interested in the questions in controversy in this action. That said parties to wit, said members of said organization are numerous, and it is impracticable to bring all of them before the court within a reasonable time. Wherefore, the three first named plaintiffs, P. J. Powers, Louis J. Keiffer and Joseph Wopprice suing in behalf of themselves and for all the other members of said organization, and acting for all the parties and said two organizations ask leave of court to sue for the benefit of all said parties in this action.

Plaintiffs further state that the said three first named plaintiffs and their associates, and all of the members of said two organizations plaintiffs herein are practical cigar makers and said three plaintiffs first named above are members of and belong to said two organizations and societies, which are voluntary associations or societies, and all of such members including plaintiffs have a common interest as parts of each of said societies for purposes common to all and beneficial to all in questions in controversy in this action.

Plaintiffs allege that said Cigar Makers' Protective Union No. 32, is a subordinate local branch or subdivision of the said Cigar Makers' International Union of America, and that the said organizations are voluntary unincorporated associations of practical cigar makers formed for the purpose of elevating the material, moral and intellectual welfare of the members of the craft of cigar makers to

¹³ Fritz v Knaub, 103 N. Y. Suppl. 1003.

which they belong, by assisting the men in obtaining employment, by mutual pecuniary aid in cases of enforced idleness or sickness by advancing to members traveling expenses to places of employment, by legitimate organized effort to secure by legislative action laws prohibiting labor by children under fourteen years of age, the abolition of the "truck" system, the tenement house cigar manufacture of cigars by prison contract labor, and generally to maintain a high standard of workmanship and fair wages to cigar makers. That said associations require their members to be law abiding and upright and to render faithful service to their employers. It is also an object of said associations to use the influence of the organization in case of difficulties arising between members of the associations and their employers to secure a just and amicable settlement of the same by wise and proper measures of arbitration, to defend and protect the laboring poor, members of said organizations, from oppression and injustice, to provide for the funeral expenses of members who shall die, and in certain cases to provide relief in the nature of life insurance to the wife, nearest kin or legatee of members who shall die.

Plaintiffs state that for the purpose of designation the articles manufactured by members of the said Cigar Makers' International Union of America, and of evidencing the fact that such articles are so manufactured, the said Cigar Makers' International Union of America, including the plaintiffs who were members thereof, heretofore devised and adopted and extensively used a trade-mark or label. A fac simile and genuine sample of which label is attached to this petition and is as follows, to wit:

Issued by authority of the Cigar Makers' International Union
of America.

Union-made Cigars.

THIS CERTIFIES that the cigars contained in this box have been made by a FIRST-CLASS WORKMAN, a member of the Cigar Makers' International Union of America, an organization opposed to inferior rat-shop, COOLIE, or FILTHY TENEMENT HOUSE WORKMANSHIP. Therefore we recommend these Cigars to all smokers throughout the world. All infringement upon this label will be punished according to law.

A. STRASSER, President, C. M. I. U. of America.
(Local Stamp.)

That prior to the adoption of said label the same had not been known in use in this country or elsewhere, and ever since said adoption the members of said Cigar Makers' International Union of America have been and are exclusively entitled to the use of said labels, and the same have been conspicuously pasted on the outside of cigar boxes containing cigars by plaintiffs and other members of the union on whose behalf this action is brought.

That said label affixed to cigar boxes is intended as a guarantee and evidence that the cigars therein contained are manufactured by a first-class workman, a member of the said Cigar Makers' International Union of America, an organization opposed to inferior, "rat" shop, coolie, prison or filthy tenement-house workmanship, and have been manufactured by men who received fair wages and were able to furnish good workmanship which had been secured in making such cigars and that the cigars so labeled are recommended by said Cigar Makers' International Union of America to all smokers throughout the world.

Plaintiffs state that because of the facts guaranteed and evidenced by such label, and because of the label evidencing such facts cigars contained in boxes so labeled rightfully command a higher price in the market than cigars of similar appearance but without such label, and that the use of the said label is a source of great profit and benefit to the plaintiffs and others on whose behalf this action is brought.

Plaintiffs further show that the defendants, John Hetterman and William Hetterman, who are associated in business as co-partners under the firm name of Hetterman Brothers have been and are infringing and about to infringe upon the exclusive right of plaintiffs and all the other members of the said Union or organizations to the use of said labels, in that the said defendants, as such partners, with intent to defraud the plaintiffs and to deceive and defraud the public, have since plaintiffs adopted and used said label as aforesaid, sold and are offering for sale in the city of Louisville, county of Jefferson, and state of Kentucky, boxes of cigars each bearing a label which falsely purports to have been issued by the Cigar Makers' International Union of America, a sample of which false label is herewith exhibited to the court as part hereof pasted upon a cigar box filed with this petition marked "C. M. I. U. O. M. No. 1" which box, when it contained cigars, was sold by said defendants to one L. D. Simms of Rudd Avenue

between 32nd and 33rd streets in the city of Louisville with the said false label thereon as it now appears on said box. That said false labels so used and about to be used by defendants are such close imitations of the genuine labels used by plaintiffs as aforesaid that they are calculated to deceive and do and will deceive and mislead the public and purchasers of cigars so labeled into the belief that the cigars so labeled with such false label and sold by defendants are manufactured by members of the aforesaid Union; and that the labels used by defendants are false and spurious imitations of the said genuine trade-mark of the plaintiffs. That by said wrongful acts of defendants heretofore plaintiffs have been damaged in a great sum, to wit, \$2,000.00.

Plaintiffs state by reason of the defendants said wrongful acts irreparable injury and damage is caused to them, and further irreparable damage and injury will be caused to them by such wrongful acts unless the defendants are enjoined and restrained from continuing the same. That the injunction herein applied for has not been refused by the court, nor by any circuit judge; that irreparable injury will result to the applicants, plaintiffs herein, if the injunction be not immediately granted.

Wherefore plaintiffs pray the court to grant unto plaintiffs an immediate order of injunction commanding the defendants to refrain from using the said false labels or any label in imitation of plaintiffs' said genuine labels or pasting such false label or labels upon any box or boxes of cigars intended to be offered for sale, or offering for sale or selling boxes of cigars bearing a label or labels which falsely purport to have been issued by the Cigar Makers' International Union of America, or any labels which are imitations of said genuine label of said Cigar Makers' International Union of America; and further pray judgment against the defendants for the sum of \$2000.00, damages sustained by the wrongful use heretofore of said false and fraudulent labels, and that the injunction herein prayed for be, on final hearing made perpetual, and for their costs herein and for all further and proper relief.¹⁴

Form No. 15.—*Bill to enjoin infringement of union label, on special statutory provisions.*

Complaining shows unto your Honor, your orator Frederick W.

¹⁴ *Hetterman v Powers*, 102 Ky. 133, 43 S. W. 180, 80 Am. St. Rep. 348, 39 L. R. A. 211.

Schmalz, of the city of Newark, County of Essex and State of New Jersey :

1. That these proceedings are instituted on behalf of the Union Hat Makers' Association of Newark, New Jersey, a voluntary association of journeymen hatters, which is not incorporated; and this action is brought in the name of your orator, who is a member of the said association and has been duly authorized by the said association so to do, but for the use and benefit of all the members of the said association, pursuant to a resolution adopted by the said association on the fourteenth day of September, eighteen hundred and ninety-six, authorizing the commencing of the same.

2. That before commencing this action or proceeding, the members so authorized filed with the county clerk of the said county of Essex a certificate of the president and secretary of the said Union Hat Makers' Association of Newark, New Jersey, showing that such authority had been duly granted to your orator, pursuant to the statute in such case made and provided, which matters and things more fully and at large appear by a copy of the said resolution and certificate ready to be produced here, and hereto attached and marked Exhibit A.

3. That the said association on the sixteenth day of September, eighteen hundred and ninety-six, caused to be filed for record in the office of the secretary of state, duplicate copies of the label, trade-mark, term, design, device, name, brand or form of advertisement, before that time adopted by the said association, by leaving two copies, counterparts or fac-similes thereof, with the said secretary, and by filing therewith a sworn statement specifying the name or names of the person, association or union on whose behalf such label, trade-mark, term, design, device, or form of advertisement, was filed, the class of merchandise and a particular description of the goods to which it had been and was intended to be appropriated, and that the parties so filing, or on whose behalf such label, trade-mark, term, design, device, or form of advertisement, was so filed, had the right to the use of the same, and that no other person, firm, association, union or corporation had the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive, and that the fac-simile copies or counterparts filed therewith are true and correct; and that upon such filing the required fee of one dollar was duly paid.

4. That at the time of filing the said copies, counterparts or fac-similes and the said sworn statement, the said Union Hat Makers' Association applied to the said secretary of state for a certified copy of the said label, trade-mark, term, design, device, or form of advertisement, and a certificate of the said secretary of state of the filing thereof, which sworn statement was in the form of an affidavit made by Stringer White, the secretary of the said association, showing that the same was and is the genuine label, trade-mark, term, design, device, or form of advertisement of the said Union Hat Makers' Association and The United Hatters of North America, and of all the sub-associations and local unions of journeyman hatters throughout the United States and Canada belonging to, or connected with, the said United Hatters of North America.

5. That the said secretary of state thereupon, on the said sixteenth day of September, eighteen hundred and ninety-six, under his hand and seal, delivered to the said Union Hat Makers' Association, the party filing and registering the said copies, counterparts or fac-similes, a certified copy of the same, and a certificate of the filing thereof, showing that the same was and is the genuine label, trade-mark, term, design, device, or form of advertisement, of the said Union Hat Makers' Association, and others, as aforesaid; and that your orator says that the said certificate from the said secretary of state, so obtained in conformity with the statute in such case made and provided, has not been assigned by the party to whom the same was so issued as aforesaid, as by the said certified copy, certificate and affidavit accompanying the same more fully and at large appears, copies of which are hereto attached and marked Exhibits A, B and C.

6. That the said label, trade-mark, term, design, device, or form of advertisement, heretofore adopted and used, and so filed and recorded as aforesaid, and shown herewith in Exhibit D, are true and correct fac-simile copies or counterparts of the said genuine label, trade-mark, term, design, device, or form of advertisement, and that the same has been owned and in actual use by the said United Hatters of North America, and the said Union Hat Makers' Association, and the said sub-associations and local unions of journeyman hatters throughout the United States and Canada, for about ten years last past, for the purpose of designating, making known or distinguishing goods, wares, merchandise, or other product of labor, as having been made, manufactured, produced, prepared,

packed or put on sale by such persons, or associations or unions of workingmen, known as journeymen hatters, or by a member, or members, of such association or unions; that neither of the said associations or unions, or any member or association connected with the said United Hatters of North America, have at any time since such adoption used any different or other label, trade-mark, term, design, device, or form of advertisement, than that so filed and recorded with the said secretary of state, and so shown as aforesaid in Exhibit D hereto attached; that no person, firm, association, union or corporation has the right to use, either in the identical form or in any such near resemblance thereto as may be calculated to deceive, the said label, trade-mark, term, design, device, or form of advertisement, so filed and recorded as aforesaid, without the authority of the said United Hatters of North America, or the said Union Hat Makers' Association, or a sub-association or local union of journeyman hatters connected with the said United Hatters of North America, and then only in compliance with the constitution, by-laws and regulations of the said United Hatters of North America and the said sub-associations or local unions belonging to or connected therewith; that the name or names of the persons, associations or unions on whose behalf such label, trade-mark, term, design, device, or form of advertisement, was filed and recorded as aforesaid, are as follows, to wit: the said United Hatters of North America, the said Union Hat Makers' Association, and all the sub-associations and local unions of journeyman hatters in the State of New Jersey and elsewhere belonging to, or connected with, the said United Hatters of North America and the members thereof, and that the same was adopted for their protection and is and has been their sole and exclusive property ever since its said adoption.

7. That the class of merchandise to which the said label, trade-mark, term, design, device, or form of advertisement, so filed as aforesaid, has been or is intended to be appropriated, by such authority as aforesaid, consists of hats or caps of any and all kinds upon which the skilled labor required to be done by journeymen has been or may be done or performed in their trades by any member or members of the said United Hatters of North America, or of the said *Union Hat Makers Association*, or of any sub-association, or local union, of journeyman hatters within the State of New Jersey, or throughout the United States and Canada, belong-

ing to or connected with the said United Hatters of North America; and that a particular description of the goods to which the same has been or is intended to be so appropriated as aforesaid, is as follows, to wit: silk hats, felt hats, straw hats, hats for children and adults, male and female, and hats of every kind, make, shape and style, manufactured or sold, or intended to be manufactured or sold, upon which the skilled labor required to be done by journeymen, has been or may be done or performed by any of the said members, employed in their trade as journeyman hatters.

8. That the said Union Hat Makers' Association is an organization composed of journeyman hatters of the District of Newark, and is a sub-association of, and connected with, the said United Hatters of North America, which is a national association of journeyman hatters embracing the members of the said Union Hat Makers' Association and other sub-associations and local unions of journeyman hatters throughout the United States and Canada; that the said Union Hat Makers' Association has its headquarters at Number 58 William Street in the said city of Newark, where the meetings of the said local association are, and have been for several years last past, regularly held; that the president of the said local association is your orator, the said Frederick W. Schmalz, and that the secretary of the said association is the said Stringer White, who, with your orator, resides in the said city of Newark, where they have resided for several years last past; that the president of the said United Hatters of North America is Edward Barrett, who resides in the city of South Norwalk, in the county of Fairfield, and State of Connecticut, and the secretary is John Phillips, who resides at Number 477 Park Avenue, in the City of Brooklyn, County of Kings, and State of New York; and that the headquarters of the said United Hatters of North America are at Number 502 Park Avenue, in the said City of Brooklyn.

9. That the said United Hatters of North America, at the last regular session of the said association, held in January, eighteen hundred and ninety-six, adopted a constitution and by-laws for the government and regulation of its affairs; among other things, it therein and thereby provided that the said association should be known as The United Hatters of North America, and also amended and thereupon passed certain label laws as set forth on page 29 of the printed and published copies of the same, to wit:

“LABEL LAWS.

“No. 1. No factories other than those working under the jurisdiction of The United Hatters of North America shall be entitled to the use of the label.

“No. 2. Any manufacturer using hats, any part of which was made in a foul shop, shall not be entitled to the use of the label.

“No. 3. Labels shall not be furnished to any person buying seconds, knockdowns, or hats in the rough to be finished outside the factory where they were made, unless a voucher is presented to the Label Secretary, filled out and signed by the steward of either the finishing or making departments.

“No. 4. The Label Steward of the finishing room shall have full charge of the distribution of the labels, and shall give to journeymen the number of labels necessary for each weighout to be sent with the hats to the trimming room.

A record shall be kept of each day's work by the Label Steward, and he shall report the same to the Label Secretary.

“No. 5. The label must be sewed in all hats, so that it cannot be taken out without destroying the label.

“No. 6. Labels shall be kept in a box under lock and key.

“No. 7. The National Secretary shall furnish to the Label Secretaries books of blank certificates and anything else that may be necessary to prevent abuses in the use of the label. The books shall be given to the Shop Stewards, and shall be filled out by them when hats are sent out from factories in the rough.

“No. 8. Shop Stewards, when they are sent out in the rough, shall send by mail to the Label Secretary of the district to which the bodies are sent voucher B. Voucher C shall be sent with the hats. When hats are sent to a district in which there is no local union of hat makers, voucher B shall be sent to the Secreatry of this association.

“No. 9. No label voucher shall be recognized after forty days from date of issue.

“No. 10. It shall be the duty of the joint local board to look after the interests of the label in their respective districts.

“No. 11. Any manufacturer who may violate any of the label laws shall be deprived of the use of the label for thirty days for the first offense.”

10. That by the second article of the said constitution it was

further provided that the said United Hatters of North America should have jurisdiction over the general welfare of local associations; apportion, in a fair, equitable manner, the number of delegates from each association; make assessments for financial purposes in accordance therewith; pass such general laws and transact such other business as in its opinion the welfare of the trade demands, provided no such law should conflict with the general spirit of the Constitution; and, by article 111, that regular sessions should be held every four years; that the proceedings of all regular conventions should become a law immediately on the final adjournment of the said conventions, and should remain so unless repealed by a two-third representation of the local associations in the manner provided for in the said Constitution and by-laws; that, in the proceedings of its conventions, local associations should be entitled to one vote for every ten members or fraction thereof; that two-thirds of the total vote in the local districts should be necessary to annul new laws made by the said association, or amendments to its existing laws; that, in case of emergencies, its Board of Directors should have power to call a special convention by a two-third vote of their number; that such special convention should be called upon the application of two-thirds of the local associations; that the proceedings of any such special convention should become a law immediately on its final adjournment, unless repealed by a two-third vote of the local associations in the manner therein provided for the annulment of laws; that the officers should convene all meetings of the said association until their successors are elected, and that the said association should pay all expenses therefor; and, by Articles IV and V, that all regularly organized associations under the jurisdiction of the said United Hatters of North America should be entitled to representation, those local associations having two hundred members or less being entitled to one representative, and those having more than two hundred members being entitled to one delegate for each additional two hundred, or a majority fraction thereof, the number of delegates to be based on the number of members in good standing at the time of the election of the delegates; that all expenses of delegates to a convention should be borne by the association; that in voting in convention, each delegate should have one vote for every ten members, or a majority fraction of ten in their local organization, to be divided equally among the delegates; that the revenues of the

organization should be raised by a percentage assessment on the earnings of its members; and, by Article VI., that no person should be considered fair who works in a shop not under the jurisdiction of the said United Hatters of North America, or of any local association, except with the consent of the local association; that where there is one, and not more than nine, fair journeymen working in a shop, or shops, far distant from any local association, he or they shall become members of the United Hatters of North America by making application to the secretary.

11. That the said constitution and by-laws further provide, among other things, for the election of a president, vice-president, secretary and treasurer; an Executive Board is also created, composed of the said last mentioned officers; also a Board of ten Directors; and the powers, duties and authority of the said officers and directors are respectively set forth; the said Board of Directors are given power at any time to make a shop fair when in their judgment it is for the best interest of the association where such shop may be; the president, vice-president, secretary and treasurer of each local association connected with the said United Hatters of North America is to constitute and be styled the local executive board, whose duty it is to see that the laws of the association are observed in their respective localities; the aforesaid national executive board is authorized to form an association under the jurisdiction of the said United Hatters of North America whenever any local association withdraws from the same or is suspended, and the local associations, under the jurisdiction of the said United Hatters of North America, are required to have the said constitution and by-laws printed in conjunction with their local laws and adopted in conformity therewith; the said constitution also provides for arbitration, where a shop's crew cannot agree with their employer, and that when a dispute occurs, in connection with prices, between employer and employee, the members shall remain at work at the old prices until the dispute is settled by arbitration; no local association has authority to declare a turnout without the consent of the Executive Board; a traveling card of membership is issued to members by the national association which entitles a member to recognition, and, in the event of his death, to the defrayal of burial expenses, when not three months in arrears for dues, not to exceed the sum of seventy-five dollars; a copy of which said printed and published constitution and by-laws of the said United Hatters

of North America is now in the possession of your orator, ready to be produced here when and as this court may direct.

12. That Edwin Woolley and Fred S. Crane, of the said city of Newark, are and have been for more than three years last past, partners in trade under the firm name and style of Woolley & Crane, and during all that time have been extensively engaged in the business of manufacturing, finishing, selling, and putting on the market to be sold, various kinds of soft and stiff hats, in very large quantities, at their factory Number 24 Fair Street in the said City of Newark; and your orator alleges, upon information and belief, that the said firm of Woolley & Crane now are, and for the last three years have been constantly using a counterfeit or imitation label on all, or nearly all, the hats which are made or finished at, and sent out from, their said factory; that no genuine labels have been obtained or used by the said firm of Woolley & Crane at any time during the last three years on any of the hats which they have manufactured, finished, sold or sent out from their said factory or elsewhere; and that a copy of the said genuine label of the said United Hatters of North America is immediately hereunder shown on the right hand, and a copy of the said counterfeit or imitation label so used as aforesaid by the said firm of Woolley & Crane is here shown on the left and on a line with the said genuine label, which said labels are hereinafter referred to as the "genuine" label and the "counterfeit" label:

Counterfeit.

The United Hatters
Stamp
of North America.

Genuine.

The United Hatters
Stamp
of North America.

13. That the said factory of the said firm of Woolley & Crane for the last three years has not been, and is not now, working under the jurisdiction of the said United Hatters of North America; that during all that time, some part of the hats finished by the said firm have been, and now are, made in a "foul" shop, and the said manufacturers and finishers, therefore, are not entitled to the use of the said genuine label; that, under such conditions, any use made of the said genuine label by the said firm of Woolley & Crane during the last three years would have been in violation of the constitution and sections 1, 2, 3, 4, 7, 8, 9, and 11, of the label laws of the said United Hatters of North America, as above set forth on pages 7 and 8 hereof; that at no time during the three

years last past has any license, right or privilege been given or granted to, or obtained by, the said firm of Woolley & Crane, by, of, from or through the said United Hatters of North America, or the said Union Hat Makers' Association or any sub-association or local union connected with or belonging to the said United Hatters of North America, or any other person or persons, for the use of the said genuine label; and that neither the said Edwin Woolley nor the said Fred S. Crane, nor the said firm of Woolley & Crane, have now, or have had during the three years last past, any right whatever to make any use of the said genuine label; and that any and all use by them, or any of them, or by any other person or persons, of the said counterfeit label, is and has been wrongful and unlawful as against your orator and those on whose behalf this action is brought.

14. That your orator believes and has reason to believe, and therefore alleges, upon information and belief, that the said firm of Woolley & Crane, now do, and for more than three years last past did, unlawfully, wrongfully and continuously during all that time, use and display on the hats manufactured, finished, put upon the market and sold as aforesaid by the said firm, the said counterfeit label above shown on page 12 hereof; and during all that time have constantly used, sold, offered for sale, uttered and circulated the said counterfeit or imitation of the said genuine label; and have wrongfully and continuously had in their possession, or under their control, large quantities of the said counterfeit label for the purpose of so using them as aforesaid and supplying them to the trade to be unlawfully and wrongfully used by their customers, and have actually supplied to others to be so used considerable quantities of the said counterfeit labels, but of or from whom, and how and how or by what means, the said counterfeit labels, or any of them, have been at any time, or are now, obtained, your orator has been and still is unable to ascertain, and cannot do so except from the said firm of Woolley & Crane in the manner hereinafter prayed for.

15. And your orator further shows and alleges, upon information and belief, that the said firm of Woolley & Crane, for three years last past, have constantly knowingly used the said counterfeit or imitation label, and knowingly sold and disposed of, and kept and had in their possession with intent that the same should be sold and disposed of, large quantities of goods, wares, mer-

chandise and product of labor, and boxes, cases and packages, to which, in which or on which such counterfeit or imitation label was sewed, stitched, attached, affixed, stamped or impressed, without any right, authority, license or privilege so to do; that any and every such use and display by or on behalf of the said firm of Woolley & Crane at any and all times has been unlawfully and wrongfully made and done, and that any and all such use of any such counterfeit label or imitation of the said label, trademark, term, design, device or form of advertisement of the said United Hatters of North America and others aforesaid is contrary to law and against the rights of your orator and those for whose use and benefit this action is brought; and that neither the said firm nor any other person or persons have any right to use, or cause or permit to be used, any counterfeit or imitation whatever of the genuine label above shown on page 12 hereof, either in the identical form, or in any such near resemblance thereto as may be calculated to deceive; that the said label, trademark or form of advertisement used by the said firm of Woolley & Crane as aforesaid is a counterfeit or imitation of the said genuine label, almost identical in form, and in such near resemblance to the said genuine label that it may be and is calculated, and was and is intended, to deceive; and that a copy of the said counterfeit imitation unlawfully used by the said firm is shown on page 12 hereof, and that any and all use of the same by the said firm, as above alleged and set forth or otherwise, is a direct violation of an act of the legislature entitled "An Act to provide for the adoption of labels, trademarks and forms of advertising by associations or unions of workingmen, and to regulate the same," approved March twenty-seventh, eighteen hundred and eighty-nine, and of the acts amendatory thereof and supplementary thereto.

16. And your orator further shows that irrespective of, and without regard to, the aforesaid legislation of this state prohibiting the said use of the counterfeit label as aforesaid, the adoption or use in the manner herein set forth, or otherwise in any way whatever, is contrary to the law of the land and a violation of the sole and exclusive rights of your orator and the members of the associations aforesaid in and to the said genuine label so adopted for their protection, and likewise a gross fraud upon manufacturers, employers, union employees, consumers and the public, who recognize and use the said genuine label to a very great extent in all

parts of the United States and Canada for the purpose of encouraging the advancing the interests of union labor in hatting and other skilled trades, by reason of the deception and false representations of the said firm of Woolley & Crane in their aforesaid use and display of the said counterfeit label as hereinbefore shown and alleged, and that the same has been, and is, not only calculated to so mislead and deceive, but that the said counterfeit label was so adopted, and was and is used, by the said firm with the deliberate intention and design, and the express purpose and object, of so misleading and deceiving, and that the said persons and the public have been misled and deceived and defrauded thereby.

17. And your orator further shows, upon information and belief; that the said firm of Woolley & Crane, on and after the filing and recording of the said genuine label on the said sixteenth day of September, eighteen hundred and ninety-six, and up to the time of the commencement of this action, and daily (except Sundays' at all times within three years last past, in this state and elsewhere as aforesaid, unlawfully, wrongfully, and injuriously, and with intent to derive profit and advantage from the use of the said counterfeit label as aforesaid and to deprive your orator, and the members of the said Union Hat Makers' Association and others as aforesaid, of the profits and advantages which your orator and they might, and otherwise would, have derived from the sale and use of the said genuine label, and without having or being entitled to any license or authority of the said United Hatters of North America or the said Union Hat Makers' Association or otherwise to use the said genuine label, and against the will of your orator and the members on whose behalf this action is brought, did use and did cause to be used, and did cause to be made and used, the said counterfeit label, in violation of the said exclusive rights in the said genuine label of the said members of the said association secured to them in conformity with the statute in such case made and provided and by the laws of the land, as hereinbefore shown and set forth; but what quantity of the said counterfeit labels the said firm have used or made, or caused to be made and used, your orator is unable to ascertain and cannot set forth, but your orator avers, on information and belief, that the said firm of Woolley & Crane so used and made, and caused to be made and used, a very large number thereof, and that they derived large profits therefrom, but to what amount your orator has not been able to ascertain and

cannot set forth; and that your orator and the said association have been and are thereby deprived of large profits by reason of the aforesaid unlawful and wrongful use by the said Woolley & Crane of the said counterfeit label, and that they have incurred large damages thereby; and that any use as aforesaid, or any other use, of the said counterfeit label, or any display or sale of any goods manufactured, used, displayed or sold upon or for which any such counterfeit or imitation is so used as aforesaid or otherwise by the said firm of Woolley & Crane should be enjoined, and that an injunction should be granted by this court to restrain and prevent any such manufacture, use, display or sale by the said firm of Woolley & Crane, or any other person or persons in their behalf; and that damages should be awarded to your orator, for the use and benefit of the said members of the said associations, resulting from such wrongful use as may be proved; and that the said firm of Woolley & Crane should be required to discover and pay to your orator, for the use and benefit of the parties injured, all the profits derived from such wrongful use, in addition to any and all damages arising therefrom; and that this court should also order all such counterfeit labels in the possession or control of the said firm of Woolley & Crane to be delivered to an officer of this court, or to the complainant, to be destroyed; and that the said firm of Woolley & Crane should be directed to pay over any and all, fines and penalties incurred by them by reason of any violation of any law providing therefor, and recoverable in this court; and that the said firm of Woolley & Crane should account to your orator.

18. And your orator further shows that he hears and has reason to fear that unless the said firm of Woolley & Crane are restrained by a writ of injunction issuing out of this honorable court, they will continue to make and use, and to cause to be made and used, large numbers of the said counterfeit label, and will thereby occasion irreparable injury to your orator and the said associations and members thereof and their exclusive rights in the said genuine label, and that so long as the same is continued by the said unlawful use of the said counterfeit label by the said firm of Woolley & Crane, many others have been and will be induced and encouraged to use the same, to the further and continuing wrong and injury to your orator and others aforesaid.

IN CONSIDERATION WHEREOF, and forasmuch as your

orator, and those for whose benefit this action is brought as aforesaid, are without adequate remedy in the premises at and by the strict rules of the common law, and can only obtain relief in this honorable court where matters of this nature are properly cognizable and relievable,

TO THE END, THEREFORE, that the said Edwin Woolley and the said Fred S. Crane, partners trading as Woolley and Crane, the defendants may, to the best and utmost of their respective knowledge, remembrance, information and belief, full, true and perfect answer make to all and singular the matters aforesaid, BUT WITHOUT OATH, and that as fully and particularly as if the same were here repeated and they, and each of them, distinctly interrogated thereto, and more especially that they may, in manner aforesaid, answer and set forth:

(a) Whether the said defendants, or either of them, or the said firm of Woolley & Crane, have used or made, or caused to be made and used, at any time within three years last past, or now use, any such counterfeit label as that above shown, and designated as such, on page 12 hereof, or any other counterfeit label, in any manner whatever, or had the same or any of them, or any similar label, in their possession or under their control during the whole or any part of the last three years:

(b) Whether, if the said defendants or either of them, or the said firm of Woolley & Crane, have had the said counterfeit label in their possession or under their control as aforesaid or otherwise, they have used such label, or any counterfeit label, on any goods manufactured, finished, produced put upon the market, sold or disposed of, by them or any or either of them, and, if so, upon what goods such label has been so used by them or either or any of them, their servants, agents or employees, and how used, and at what time and in what quantities:

(c) Whether the said defendants or either of them, or the said firm of Woolley & Crane, have, at any time within the last three years, supplied or delivered the said counterfeit label above shown, or any similar label, or permitted or known the same to be supplied, to others, or given consent to any person or persons, firm or corporation, to use the same, doing business or trading with them, or any other person or persons, firm or corporation, and, if so, the name or names of any and all such persons to whom the same has

been given, supplied, or delivered, or such consent given, as aforesaid, and their residences or locations:

(d) Whether or not the said defendants or either of them, or the said firm of Woolley & Crane, have purchased or bought, or caused to be purchased or bought, or have had or received, of or from any person or persons, firm or corporation, any of the said counterfeit labels like the one shown on page 12 hereof, or any counterfeit label, or any label, trademark, term design, device or form of advertisement intended or calculated to lead the public to believe that the said defendants, or the said firm of Woolley & Crane, are manufacturing, finishing, putting upon the market or selling any hats or goods having the said genuine label shown as aforesaid, or using the same in any manner whatever; and, if so, the name or names of the person or persons, firm or corporation, from whom the same were purchased, bought, obtained, had or received, and the price paid, or agreed to be paid, by the said defendants or either of them, or by the said firm of Woolley & Crane for the same;

AND that the said defendants, Edwin Woolley and Fred S. Crane, partners in trade by and under the firm, name and style of Woolley & Crane, their agents, servants and employees, may be enjoined and restrained, by the judgment, order and decree of this honorable court, from having, possessing or using the said counterfeit label, or any counterfeit label, or any colorable imitation of the said genuine label; and from using the said genuine label, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; and from using any counterfeit of the said genuine label above shown, and from the manufacture, display or sale of any such counterfeit label above shown; and from any manufacture, use, display, or sale, of any imitation of the said genuine label, or any label in any such near resemblance thereto as might be calculated to deceive the public; or any label bearing the name, "The United Hatters of North America" or the "Union Hat Makers' Association of Newark, New Jersey," or any of the words, figures or designs of the said genuine label, or any label having any such resemblance to the said genuine label in any respect as might be calculated to deceive the public;

AND that the said court shall award to your orator, for the use

and benefit of all the members of the said associations or union of workmen in whose behalf this action is brought such damages resulting from any wrongful use of the said counterfeit label as may be proved, and shall require the said defendants Edwin Woolley and Fred S. Crane, partners as aforesaid trading as Woolley & Crane, to pay to your orator, for the use and benefit of the parties injured, the profits derived from such wrongful use, or both profits and damages;

AND that this court shall order any and all such counterfeit labels in the possession or under the control of the said defendants, or either of them, to be delivered to an officer of this court, or to your orator, the complainant, to be destroyed;

AND that the said defendants may account for and pay over to your orator any and all such profits, advantages or benefits as they, or either of them, may have derived from any wrongful use of the said counterfeit label, or any counterfeit or imitation of the said genuine label of the said United Hatters of North America and others aforesaid, and pay to your orator all the costs, expenses and disbursements occasioned, or that may be incurred, by reason or on account of these proceedings;

And that your orator may have such further or other relief in the premises as the nature of the case may require and as shall be agreeable to equity and good conscience;

MAY IT PLEASE YOUR HONOR, the premises considered, to grant unto your orator not only the state's writ or writs of injunction, issuing out of and under the seal of this honorable court, to be directed to the said Edwin Woolley and the said Fred S. Crane, enjoining and restraining them, and each of them, in accordance with the prayers of this bill; but also the state's writ or writs of subpoena, issuing out of and under the seal of this honorable court, to be directed to the said Edwin Woolley and the said Fred S. Crane, commanding them, and each of them, by a certain day and under a certain penalty therein to be expressed, to be and appear before this honorable court, then and there to answer, all and singular, the said premises, and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet, and as may be agreeable to equity and good conscience.

¹⁵ Schmalz v Wooley, 57 N. J. Eq. 303, 41 Atl. 939, 73 Am. St. Rep. 637.

Form No. 16.—*Information for infringement of union label.*

The grand jurors chosen, selected and sworn, in and for the county of St. Clair, in the name and by the authority of the State of Illinois, upon their oaths present that Theodore Vogt on the — day of ———, 1894, at the city of East St. Louis, in St. Clair County, did wilfully, unlawfully, and knowingly, use an imitation of a certain label, trademark, and form of advertisement of Cigar Makers' International Union, No. 250, of Belleville, Illinois, upon certain boxes containing cigars, then and there sold and handled by the said Theodore Vogt, he, the said Theodore Vogt, then and there knowing the said label, trademark or advertisement to be an imitation of the true and genuine label, trademark and form of advertisement adopted by said Cigar Makers' International Union, No. 250, of Belleville, Illinois, contrary to the statutes in such case made and provided, and against the peace and dignity of the State of Illinois.¹⁸

Form No. 17.—*Information for infringement of union label.*

Nelson Thomas, Assistant Prosecuting Attorney, of the City of St. Louis Court of Criminal Correction, now here in court, on behalf of the State of Missouri, information makes as follows:

That one Albert H. St. Clair in the City of St. Louis, on the first day of April, 1905, did unlawfully and knowingly, with intent to defraud the International Typographical Union of North America, an association and union of workingmen, which said union is not incorporated, engaged in the art of printing and in allied arts, wishing to adopt a particular name, term, design and device as its trade-mark, to designate, make known and distinguish goods, wares and merchandise manufactured and prepared by a member or members of said union, wrote out a description of such name, term, design and device, describing the same accurately, as a label, stamp and device consisting of an imprint containing the words, "Typographical Union Label," or containing the words, "Allied Printing Trades Council," together with the name of the city or town in which is located the local union or subordinate body using said label, stamp and device, said label, stamp and device to be imprinted from electrotypes cuts, and in so far as practicable to be of the following designs:

¹⁸ Vogt v People, 59 Ill. App. 684.

“For Typographical Union Label:

Typographical

UNION LABEL

(Name of town or city.)

For Allied Printing Trades Council:

Allied Printing

UNION

TRADES COUNCIL

Label.”

That said label, stamp and device containing the words “Typographical Union Label,” with the name of the city or town, to be used and intended to be used upon matter in which the members of said union are engaged wholly at the art of printing or composition, and said label, stamp and device, containing the words, “Allied Printing Trades Council Union Label” with the name of the city or town to be used and intended to be used upon the matter in which the members of said union are engaged as well as binding, stereotyping or operating printing presses as at the art of printing or composition; and signed and acknowledged the same before a notary public, and filed the same in the office of the Secretary of State of this state, by leaving two copies, counterparts thereof with said Secretary of State, who filed the same in his office on October 25th, 1900, and said Secretary of State thereafter delivered to said International Typographical Union of North America, a duly attested certificate of the record of same; which said design, label, stamp, device and trade-mark is designed for, used for and intended to be used by members of said International Typographical Union of North America, its subordinate councils and local bodies, and such other person or persons as might be authorized and permitted to use the same by the Allied Printing Trades Councils of said International Typographical Union of North America, to be usually affixed by them respectively, to, upon and used in connection with printed matter and articles made and printed by them respectively.

That said International Typographical Union of North America in St. Louis, Missouri, is composed of members thereof formed into subordinate unions and local bodies, and the Allied Printing Trades Council of St. Louis, Missouri, is composed of subordinate unions and local bodies thereof in said St. Louis, Missouri. That said Allied Printing Trades Council of St. Louis, Missouri, was, at

and prior to the times hereinafter named, agent of said International Typographical Union of North America, and acting as such agent, and then and there having authority so to do, loaned to The Modern View Printing Company, a corporation organized under the laws of the State of Missouri, then and there engaged at the art of printing or composition, binding, stereotyping and operating printing presses, said Allied Printing Trades Council's label, stamp, device and trade-mark, and numbered the same 85, and authorized and permitted the said Modern View Printing Company to use the same and to affix the same upon and use it in connection with printing matter and articles made and printed by said The Modern View Printing Company.

That one Albert H. St. Clair, in the city of St. Louis, on the first day of April, 1905, did unlawfully and knowingly, with intent to defraud said International Typographical Union of North America, said Allied Printing Trades Council of St. Louis, Missouri, and said The Modern View Printing Company, and divers persons whose names are unknown and therefore cannot be stated, have in his possession a representation, likeness, similitude and imitation of the said private design, device, stamp and trade-mark of said International Typographical Union of North America, designed for, used and intended to be used by said Allied Printing Trades Council of St. Louis, Missouri, and said The Modern View Printing Company, to be, and usually affixed by said Allied Printing Trades Council of St. Louis, Missouri, and said The Modern View Printing Company, to, upon and used in connection with printed matter and articles made and printed by said Allied Printing Trades Council of St. Louis, Missouri, and said The Modern View Printing Company, for the purpose on the part of him said Albert H. St. Clair, of then and there unlawfully and fraudulently making impressions on printing matter and articles made and printed by him, said Albert H. St. Clair, then and there unlawfully and fraudulently selling the same when so made, and then and there unlawfully and fraudulently passing the same off on the community as the original printed matter, articles and merchandise of said Allied Printing Trades Council of St. Louis, Missouri, and said The Modern View Printing Company, and did then and there in fact unlawfully and fraudulently print three thousand advertising cards of and for one Howard E. Lindsay, on which said advertising cards said Albert H. St. Clair did then and there unlawfully and fraudulently

make, impress and print said representation, likeness, similitude and imitation, which is as follows: (Here is inserted a copy of the label). of said private design, device, stamp and trade-mark of said International Typographical Union of North America, designed for and used, intended to be used by said Allied Printing Trades Council of St. Louis, Missouri, and said The Modern View Printing Company, and did then and there in fact unlawfully and fraudulently use and sell and deliver said three thousand advertising cards so made, impressed and printed by him, said Albert H. St. Clair, to said Howard E. Lindsay, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State.

And the said Nelson Thomas, Assistant Prosecuting Attorney of the said St. Louis Court of Criminal Correction, on behalf of the State of Missouri, further information makes as follows:

That said Albert H. St. Clair, in the city of St. Louis, afterwards, on the first day of April, 1905, did unlawfully and knowingly, with intent to defraud said International Typographical Union of North America, said Allied Printing Trades Council of St. Louis, Missouri, and said The Modern View Printing Company, and divers persons whose names are unknown and therefore cannot be stated, have in his possession the genuine label, stamp, device and trade-mark aforesaid, of said International Typographical Union of North America, designed for, used and intended to be used by said Allied Printing Trade Council of St. Louis, Missouri, and said The Modern View Printing Company, to be, and usually affixed by said Allied Printing Trades Council of St. Louis, Missouri, and said The Modern View Printing Company, to, upon and used in connection with printed matter and articles made, manufactured and printed by said Allied Printing Trades Council of St. Louis, Missouri, and said The Modern View Printing Company, and did then and there, unlawfully, wrongfully and fraudulently use said genuine label, stamp, device and trade-mark, which is as follows: (Here is inserted a copy of the label) by then and there unlawfully, wrongfully and fraudulently printing for, and by then and there selling and delivering to one Howard E. Lindsay, three thousand advertising cards of and for him, said Howard E. Lindsay, on which said advertising cards said Albert H. St. Clair had then and there unlawfully, wrongfully, knowingly

and fraudulently made, impressed and printed said genuine label, stamp, device and trade-mark with intent then and there to unlawfully, wrongfully and fraudulently pass off said advertising cards so made, impressed and printed by him, said Albert H. St. Clair, which were not then and there the manufacture of said persons and association of union workingmen to whom said genuine label, stamp, device and trade-mark then and there properly belonged as aforesaid, to Howard E. Lindsay, as genuine and original advertising cards manufactured by said persons and association of union workingmen to whom said genuine label, stamp, device and trade-mark then and there properly belonged aforesaid, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State.¹⁷

Form No. 18.—*Injunction restraining defendants from obstructing complainant's business; from maintaining pickets at or near complainant's premises; from assaulting, or intimidating its employees or those seeking employment from it to prevent them from working for complainant; from following employes to their homes to induce them to leave their employment, or to molest or intimidate their families; from paying money to employes to induce them to leave their employment; from organizing a boycott against complainant or its employes and using threats of injury to the business of persons dealing with complainant or its employes; and from sending communications to customers or other persons to dissuade them from dealing with complainant.*

Defendants were perpetually enjoined "from in any manner interfering with, hindering, obstructing, or stopping the business of said complainants, or any of them, or of their agents, servants, or employes, in the operation of the business of said complainants, respectively; from picketing or maintaining at or near the premises of said complainants, or any of them, any picket or pickets; from assaulting or intimidating, by threats or otherwise, the employes of any of said complainants or any persons who may become or seek to become employes of said complainants, or either of them; from congregating about or near the places of business of any of said complainants' or about or near any place where their employes are lodged or boarded for the purpose of compelling,

¹⁷ State v St. Clair (Mo. App.) 117 S. W. 648.

inducing, or soliciting the employes of any of said complainants to leave their service or to refuse to work for them or any of them, or for the purpose of preventing, or attempting to prevent, any person from freely entering into the service of any of said complainants; from interfering with or attempting to hinder complainants, or any of them, in carrying on their business in the usual and ordinary way; from following the employes of any of said complainants to their homes or other places, or calling upon them, for the purpose of inducing them to leave the employ of said complainants or of molesting or intimidating them or their families; from attempting by bribery, payment, or promise of money, offers of transportation, or other rewards, to induce the employes of any of said complainants to leave their service; from organizing or maintaining any boycott against said complainants or any of them; from attempting to induce customers or other persons to abstain from working for or accepting work from said complainants or any of them; from attempting to prevent, by threats or injury or by threats of calling strike, any person from accepting work from or doing work for said complainants or any of them; from attempting to create or enforce any boycott against any of the employes of the complainants, or any of them, and from attempting to induce people in their neighborhood or elsewhere not to deal with them; from sending any circular or other communication to customers, or other persons who might deal or transact business with said complainants, or either of them, for the purpose of dissuading such persons from so doing; and from doing any other act or thing in furtherance of the conspiracy set forth in said bill.”¹⁸

Form No. 19.—*Injunction restraining defendants from entering on complainant's premises to obstruct its business; from using force, violence, or intimidation to compel its employes to refuse to perform their duties, or to quit complainant's service or to prevent other workmen from entering its service, or other persons from going upon the premises for any lawful purpose; from congregating at or near the premises with intent to intimidate its employes and prevent them from rendering their services, or to cause them to leave the*

¹⁸ A. R. Barnes & Co. v Chicago Typographical Union, 232 Ill. 424, 83 N. E. 940, 14 L. R. A. N. S. 1018.

service or to prevent others from entering the service; and from going to the homes of the employes to coerce them to leave their employment or to intimidate their wives and families.

It is ordered, adjudged, and decreed that each and all of the respondents not dismissed as aforesaid, and any and all other persons associated with them in committing the acts and grievances complained of in said bill, be, and they are hereby, ordered and commanded to desist and refrain from in any manner interfering with the free use and occupation by complainant of any and all of its property or premises of every kind and character; and from entering upon the grounds or premises of complainant for the purpose of interfering with, hindering, or obstructing its business; and from compelling or inducing, or attempting to compel or induce, by threats, intimidation, force, or violence, any of the employes of complainant to refuse or fail to perform their duties as such employes; and from compelling or inducing, or attempting to compel or induce, by threats, intimidation, force, or violence, any of the employes of complainant to leave the service of complainant; and from preventing, or attempting to prevent, any person or persons, by threats, intimidation, force, or violence, from entering the service of complainant; or from preventing, by violence or in any manner of intimidation, any person or persons from going to or upon the premises of complainant for any lawful purpose whatever, or from aiding, assisting, or abetting any person or persons to commit any or either of the acts aforesaid; and the said respondents, each and all of them, are forbidden, and restrained from congregating at or near the premises of complainant for the purpose of intimidating its employes or coercing said employes, or preventing them from rendering their service to said complainant; and from inducing by intimidation, coercion, or threats, any employe to leave the employment of said complainant, or from attacking, assaulting, threatening, or by use of abusive language, or in any manner of intimidation, at any place within the city of Omaha, attempting to prevent any of the employes of complainant from continuing in its service, or any person or persons from engaging in the service of complainant; and each and all of them are enjoined and restrained from going, either singly or collectively, to the homes of complainant's employes, or any of them, for the purpose of intimidating or coercing any or all of them to leave the employment of complainant, or from entering complainant's employ, and as well from intimidating or threaten-

ing in any manner the wives and families of said employes for the purpose of preventing any employe from remaining in the service of complainant."

Form No. 20.—*Injunction restraining defendants from obstructing complainant's business in any manner; from using violence or intimidation to cause his employes to quit his service and others willing to enter his service from doing so; from congregating at or near complainant's premises to prevent complainant's employes from rendering their services; from molesting in any manner employes of complainant or those seeking employment from him; and from picketing the streets or approaches to complainant's premises for the purpose of intimidating his employes or those seeking employment from him.*

It is hereby ordered adjudged, and decreed that the Wire Drawers' and Die Makers' Union, No. 1, of Cleveland, Ohio, Walter Gillette, its president, and Wire Drawers' and Die Makers' Union, No. 31, of Cleveland, Ohio, Fred Walker, its president, and the officers and members of said union, and each and all of the other defendants named in the complainant's bill, and any and all other persons associated with them in committing the acts and grievances complained of in said bill, be and they are hereby, ordered and commanded to desist and refrain from in any manner interfering with, hindering, obstructing or stopping any of the business of the complainant the American Steel & Wire Company, or its agents, servants or employes, in the operation of its said American Mill, or its other mills in the city of Cleveland, county of Cuyahoga and state of Ohio, or elsewhere; and from entering upon the grounds or premises of the complainant for the purpose of interfering with, hindering, or obstructing its business in any form or manner; and from compelling or inducing, or attempting to compel or induce, by threats, intimidation, persuasion, force, or violence, any of the employes of the American Steel & Wire Company to refuse or fail to perform their duties as such employes; and from compelling or inducing, or attempting to compel or induce, by threats, intimidation, force, or violence, any of the employes of the complainant to leave the service of complainant; and from preventing or attempting to prevent any person or persons, by threats, intimidation, force, or violence, from entering the serv-

²⁰ Union Pacific R. Co. v Ruef, 120 Fed. 102.

ice of complainant, the American Steel & Wire Company; and from doing any act whatever in furtherance of any conspiracy or combination to restrain either the American Steel & Wire Company or its officers or employes in the free and unhindered control of the business of the American Steel & Wire Company; and from ordering, directing, aiding, assisting, or abetting, in any manner whatever, any person or persons to commit any or either of the acts aforesaid. And the said defendants, and each and all of them, are forbidden and restrained from congregating at or near the premises of the said American Mill, or other mills of the American Steel & Wire Company in said city of Cleveland, for the purpose of intimidating its employes or coercing said employes, or preventing them from rendering their service to said company; and from inducing or coercing by threats said employes to leave the employment of the American Steel & Wire Company; and from in any manner interfering with the American Steel & Wire Company in carrying on its business in its usual and ordinary way; and from in any manner interfering with or molesting any person or persons who may be employed or seeking employment by the American Steel & Wire Company in the operation of its said American Mill and other mills. And the said defendants, and each and all of them, are hereby restrained and forbidden, either singly or in combination with others, from collecting in and about the approaches to said complainant's American Mill or other mills for the purpose of picketing or patrolling or guarding the streets, avenues, gates, and approaches to the property of the American Steel & Wire Company for the purpose of intimidating, threatening, or coercing any of the employes of complainant, or any person seeking the employment of complainant; and from interfering with the employes of said company in going to and from their daily work at the mill of complainant. And defendants, and each and all of them, are enjoined and restrained from going, either singly or collectively, to the homes of complainant's employes, or any of them, for the purpose of intimidating or coercing any or all of them to leave the employment of the complainant or from entering complainant's employment, and, as well, from intimidating or threatening in any manner the wives and families of said employes at their said homes.

And it is further ordered that the aforesaid injunction and writ of injunction shall be in force and binding upon each of the said

defendants and all of them so named in said bill from and after service upon them severally of a copy of this order by delivering to them severally a copy of this order, or by reading the same to them; and shall be binding upon each and every member of said Wire Drawers' & Die Makers' Union, No. 1, of Cleveland, Ohio, and Wire Drawers' & Die Makers' Union, No. 3, of Cleveland, Ohio, from the time of notice or service of a copy of this order upon the said Walter Gillette and Fred Walker, and other members of said unions, parties defendant herein; and shall be binding upon said defendants whose names are alleged to be unknown from and after the service of a copy of this order upon them, respectively, by reading of the same to them, or by publication thereof by posting or printing; and shall be binding upon the said defendants and all other persons whatsoever who are not named herein from and after the time when they severally have knowledge of the entry of this order and the existence of this injunction. This order to continue in effect until the further order of this court, and upon said complainant's entering into bond, in the sum of \$2,500, conditioned for the payment of costs and moneys adjudged against them in case this injunction shall be dissolved.²⁰

Form No. 21.—*Temporary injunction to restrain picketing for the purpose of persuading or otherwise preventing complainant's employes from working for him, or to break their contracts with him, or to induce other workmen not to enter his service.*

It is ordered that the defendants other than Angus McDonald, E. C. Rose, James Traddle, Roderick Frazer and William O'Brien, their members, servants and agents and others acting by their authority, be restrained until the trial of this action or until further order, from watching or besetting, or causing to be watched or beset, the Canadian Pacific Railway Company's station at Rossland, and the stations, tracks and crossings of the said railway in the Province of British Columbia and the Red Mountain Railway Company's station at Rossland, and all the stations, tracks and crossings of said railway, or the works of the plaintiffs or any of them, or the approaches thereto, or the place of residence, or any place where they may happen to be, or any workman employed by or proposing to work for the plaintiff, for the purpose of persuading

²⁰ American Steel & Wire Co. v Wire Drawers etc. Union, 90 Fed. 617.

or otherwise preventing persons from working for the plaintiffs, and from procuring any person from working for the plaintiff, and from procuring any persons who have or may enter into contracts with the plaintiffs to commit a breach of such contracts.²¹

Form No. 22.—*Temporary injunction restraining union, its officers, and others as members and individuals from interfering with the operation of complainant railroad company by trespassing on its premises, by use of threats, violence, intimidation and persuasion, to induce its employes to fail to perform their duties, or to quit the service, and to prevent others from accepting employment from complainant; from picketing its trains; or the approaches to its property, or the homes of its employes for the purpose of inducing by violence, threats, intimidation, or persuasion, its employes not to perform their duties or to quit the service, or other workmen not to enter the service.*

It is hereby ordered, adjudged, and decreed that the Machinists' Local Union, No. 14, of Memphis, Tennessee, and W. J. Adams, as president, and F. W. Borsch, as secretary thereof, and F. Baker, G. W. Buckalew, W. M. Cooper, D. J. Farrell, W. S. Griswold, F. Henze, F. B. Hazlewood, T. T. Kearney, J. Williamson, J. Mommens, J. P. Stanton, Charles Wise, C. P. Marshall, Jr., S. E. Turner, Sam Turner, C. D. Bailey, C. F. Bailey, George West and John Boschart, as individuals and as members of said Machinists' Local Union, No. 14, and any and all other persons associated with them in committing the acts or grievances complained of in said bill, be, and they are hereby, ordered and commanded to desist and refrain from in any manner interfering with, hindering, obstructing, or delaying any of the business of the Southern Railway Company, or its agents, servants, or employes in the discharge of their duties as such, in the operation of said railway and in the machine shops of said company at Memphis or elsewhere by trespassing on or entering upon the grounds and premises of said company, or within its yards or depots, for the purpose of interfering therewith, or hindering or obstructing its business in any manner whatsoever, or with the purpose of compelling or inducing, by threats, force, intimidation, violence, violent or abusive language, or persuasion, any of the employes of said Southern Railway Company to refuse or

²¹ *Le Roy v Rossland Miners' Union*, 8 Brit. Col. Can. 370.

fail to perform their duties as such employes; also from compelling or inducing or attempting to compel or induce, by threats, intimidation, force, or violence, or abusive or violent language, any of the employes of said company to leave its service or fail or refuse to perform their duties as such employes, or to compel or attempt to compel, by threats, intimidation, force, violent or abusive language, any person desiring to seek employment in said shops from so accepting employment therein; also from entering upon or establishing a picket or pickets of men on or patrolling its trains entering or about to enter or leaving or about to leave the city of Memphis, for the purpose of inducing or compelling, by threats, intimidation, violence, violent or abusive language or persuasion, any employe of said company to fail or refuse to perform his duties as such, or for the purpose of interviewing or talking to any person or persons on said train or trains coming to Memphis to accept employment with said company, for the purpose and with the intention of inducing or compelling them, by threats, violence, intimidation, violent or abusive language, persuasion, or in any other manner whatsoever, to refuse or fail to accept service with said company; also from compelling or inducing or attempting to compel or induce by threats, force, intimidation or violent or abusive language, any employe of said Southern Railway Company to refuse or fail to perform their duties as such employe, and from compelling or attempting to compel or induce, by threats, intimidation, force, or violence, or abusive or violent language, any such employe to leave the service of the complainant, and, by like methods, to prevent or attempt to prevent any person desiring to accept employment with said Southern Railway Company in its shops at Memphis or elsewhere from doing so by threats, violence, force, intimidation, or violent or abusive language; also from piling brick or other objects against or on the fences of said Southern Railway Company inclosing its said yards and shops in the city of Memphis, and from climbing or attempting to climb on, upon, or over said fences, or from looking through the cracks or holes in said fences, for the purpose of interviewing or talking to employes of said company working in said yards and shops, in order to induce them to leave the service of said company; also from climbing telegraph, telephone, or other poles in or on the sidewalk and near to or adjoining said fences inclosing complainant's yards and shops, for the purpose of halloaing or beckoning to said employes whilst

in or at work in said yards or shops to come to the fence to be talked to by them, in order to induce said employes to leave the service of the complainant; also from sending or carrying into said yards or shops hostile, threatening, or abusive language or messages to and of the employes working therein, for the purpose of forcing or inducing or attempting to force or induce said employes or any of them to leave the service of said company, or to fail or refuse to perform their duties as such; also from interfering in any manner whatsoever, either by threats, violence, intimidation, persuasion or entreaty with the apprentices now at work in the shops of said railway company, in order to entice or induce them, or either of them, to quit the service of said company, or to fail or refuse to perform their duties as such apprentices, and from ordering, aiding, directing, assisting, or abetting in any manner whatsoever any person or persons to commit any or either of the acts aforesaid; and the said defendants, and each of them, are forbidden and restrained from congregating at or near the premises of the said Southern Railway Company in the city of Memphis, and from picketing or patrolling said premises, for the purpose of intimidating its employes or coercing them by threats, intimidation, violence, abusive or violent language, or preventing them, in the manner aforesaid, from rendering their service to said company, and, in like manner, from inducing or coercing them to leave the employment of said Southern Railway Company, and from in any manner so interfering with said company in carrying on its business in its usual and ordinary way, and from interfering, by threats, intimidation, violence, violent or abusive language, any person or persons who may be employed or seeking employment by said Southern Railway Company in the operation of said railway and shops; and the said defendants, and each and all of them, are hereby restrained and forbidden, either singly or in combination with others, from collecting in and about the approaches to said depot and yards for the purpose of picketing or patrolling or guarding the streets, avenues, gates, and approaches to the property of said company for the purpose of intimidating, threatening, or coercing any of the employes of said company from work in said shops, or any persons seeking employment therein from entering into such employment, and from so interfering with said employes in going to and from their daily work in the yards and shops of said company; and defendants, and each and all of them, are enjoined and re-

strained from going, either singly or collectively, to the homes or boarding houses of complainant's employes, or any of them, for the purpose of intimidating or coercing any or all of them to leave the employment of complainant. It is further ordered that the afore-said injunction and writ of injunction shall be in force and binding upon each of said defendants, and all of them, so named in said bill, from and after service upon them severally of a copy of this order by delivering to them a copy thereof, or by reading or offering to read the same to them, and shall be binding upon each and every member of said Machinists' Local Union, No. 14, of Memphis, Tenn., from the time of notice or service of a copy of this order upon said W. J. Adams, president, and F. W. Borsch, secretary thereof, and other members of said union, parties defendant hereto, and shall be binding upon said defendants whose names are alleged to be unknown, from and after the service of a copy of this order upon them respectively by the reading of the same to them or by publication thereof, or by posting, and shall be binding upon said defendants and all other persons whomsoever who are not named herein, from and after the time when they severally have knowledge, by actual service, of publication of the entry of this order and of the existence of this injunction; this order to continue in effect until the further orders of this court, and conditioned on complainant first entering into bond in the sum of \$1,000, conditioned for the payment of costs and moneys adjudged against them in case this injunction shall be dissolved; said bond to be approved by the clerk of this court.²²

Form No. 23.—*Final injunction restraining defendants from using threats, violence, or intimidation, to prevent complainant's employes from working for him and others from entering his service; from unlawful picketing of complainant's place of business or the approaches thereto, or his employes' residences; and from threatening or intimidating the wives and families of complainant's employes.*

Defendants were restrained:

From compelling or inducing or attempting to compel or induce by threats, intimidation, force or violence any of the said company's employes to fail or refuse to work for it, or to leave its service.

²² Southern R. Co. v Machinists' Local Union, 111 Fed. 49.

From preventing or attempting to prevent any person or persons by threats, intimidation, force or violence, from freely entering into or continuing in the said company's service.

And from congregating upon or about the company's premises or the streets, approaches and places adjacent or leading to said premises for the purpose of intimidating its employes or preventing or hindering them from fulfilling their duties as such employes or for the purpose of in such manner as to induce or coerce by threats, violence, intimidation any of the said company's employes to leave its service or any person to refuse to enter its service.

From congregating upon or about the company's premises or the sidewalk, streets, alleys or approaches adjoining or adjacent to or leading to said premises, and from picketing in a threatening or intimidating manner the said complainant's places of business or the homes or boarding houses or residences of the said complainant's employes.

From interfering with the said company's employes in going to and from their work.

From going singly or collectively to the homes of the said company's employes for the purpose of intimidating or threatening them to cause them to leave its service.

From intimidating or threatening in any manner the wives and families of said employes at their homes or elsewhere.

From doing any of the aforesaid or any other acts for the purpose of compelling and inducing or attempting to compel or induce the complainant by threats, intimidation, force or violence, against its will or the will of its officers, to employ or to discharge any person or persons whomsoever, and especially to employ members of said unions or discharge persons who are not members of said unions.

From combining, associating, agreeing, mutually undertaking, concerting together or with other persons for the purpose of doing or causing to be done any of the aforesaid prohibited acts.

From by threats, intimidation, persuasion, force or violence, compelling or attempting to compel or induce any of the apprentices in the employ of the said complainant to break their contracts and leave the employ of said complainant.²³

²³ *Iron Molders' Union v Allis-Chalmers Co.*, 166 Fed. 45, 20 L. R. A. N. S. 315.

Form No. 24.—*Temporary injunction restraining defendants from using threats, violence or intimidation, to prevent complainant's employes and others willing to enter his service from working for him; from picketing his premises or other places with intent to unlawfully interfere with his employes or unlawfully obstruct his business; from interfering with free access of his employes to his place of business, or with their free return to their homes; and from intimidating or boycotting by distribution of circulars, etc., or otherwise threatening complainant's employes, customers, or the public, to cause them to refuse to do business with complainant.*

The injunction restrained the respondent and others from:—
“(1) In any manner unlawfully interfering with the employes of the Ideal Manufacturing Company, complainant herein, now in the employ of complainant, and from in any unlawful manner interfering with any person who may desire to enter the employ of the Ideal Manufacturing Company, by the use of threats, intimidation, personal violence, or other unlawful means calculated or intended to deter or prevent such person or persons from entering or continuing in the employment of the Ideal Manufacturing Company, or calculated or intended to induce any such person or persons into leaving the employ of the said Ideal Manufacturing Company. (2) From congregating, gathering, assembling, lingering, or loitering about or in the neighborhood of the premises upon which the Ideal Manufacturing Company is engaged in carrying on its business, or at other places, with intent to unlawfully interfere with the employes of the said Ideal Manufacturing Company, or with the prosecution of their work, or to unlawfully interfere with or intimidate or threaten the employes of the Ideal Manufacturing Company, with intent to cause them to leave the employment of said company, or to interfere with or obstruct in any unlawful manner, the business and trade of said Ideal Manufacturing Company. (3) From interfering with the free access of the employes of the said Ideal Manufacturing Company to the premises on which the said company is engaged in carrying on and conducting its business in their places of work, and likewise from interfering with the free return of the said employes to their homes or places of business. (4) From giving any directions or orders, through associations, committees, or otherwise, for the performance of any such unlawful acts or threats or acts of intimidation hereinbefore enjoined, and from in any unlawful manner, whatever, impeding ob-

structing, or interfering with the regular operation and conduct of the business of said Ideal Manufacturing Company. (5) From interfering, intimidating, boycotting by the distribution of circulars or otherwise, or otherwise molesting or threatening in any manner the employes or patrons of the said Ideal Manufacturing Company, or any other person or persons, for the purpose, by means of such interference, intimidation, threats, or boycotting, of inducing such person or persons not to do business or deal with or transact business with said Ideal Manufacturing Company. (6) From the performance of any acts, threats, or acts of intimidation hereinbefore enjoined, and from obstructing or interfering, by boycotting or otherwise, or by any acts of intimidation or coercion, with the regular conduct and operation of the business of the said Ideal Manufacturing Company, and from preventing, by these means, said company from carrying on its business, until the further order of this court." ²⁴

Form No. 25.—*Injunction to restrain defendants from boycotting complainants' business, or that of any other person, in order to prevent or injure the regular operation of complainants' business or the transportation or sale of their manufactures; from publishing or circulating statements written or oral, calling the attention of their customers or the public to any boycott or strike against complainants; from publishing or circulating statements written or oral that complainants are unfair; from coercing or attempting to coerce any dealer or the public not to buy, wear, or deal in, goods manufactured by complainants; and from threatening injury to the business of any person or firm who should deal in such goods.*

The President of the United States of America, to California State Federation of Labor, San Francisco Labor Council, Harry Knox, T. F. Gallagher, Nicholas Blum, Daniel D. Sullivan, J. R. Hillis, C. W. Holquist, J. C. Templeton, John Guinne, Frank J. Bounington, G. K. Smith, Will J. French, A. C. Rose, Russell J. Wisher, P. H. Coyle, J. A. Johnson, Richard Cornelius, Sarah Hogan, Charles T. Shuppart, J. L. Franklin, Theodore Johnson, G. M. Lipman, Wm. P. McCabe, George Metzger, A. Burton, J. E. Hooper, A. S. Howe, Joseph Moran, Annie Mullen, O. E. Pierce, T. E. Zant, J. R. Roland, their, and each of their, attorneys, agents,

²⁴ Ideal Mfg. Co. v Ludwig, 149 Mich. 133, 112 N. W. 723.

employees, and all persons acting in aid of, or in conjunction with them, or any of them, greeting:

Whereas, Dietrich E. Loewe and Martin Fuchs, complainants in the above-entitled cause, and citizens of the state of Connecticut, have filed on the chancery side of the Circuit Court of the United States for the Northern District of California a bill against the above-named defendants and others, and have obtained an allowance for an injunction as prayed for in said bill:

Now, therefore, we, having regard to the matters in said bill contained, do hereby command and strictly enjoin you, the said California State Federation of Labor, San Francisco Labor Council, Harry Knox, T. F. Gallagher, Nicholas Blum, Daniel D. Sullivan, J. R. Hillis, C. W. Holmquist, J. C. Templeton, John Guinne, Frank J. Bonnington, G. K. Smith, Will J. French, A. C. Rose, Russel I. Wisler, P. H. Coyle, J. A. Johnson, Richard Cornelius, Sarah Hogan, Charles T. Shuppert, J. L. Franklin, Theodore Johnson, G. M. Lipman, Wm. P. McCabe, George Metzger, A. Burton, J. E. Hooper, A. S. Howe, Joseph Moran, Annie Mullen, O. E. Pierce, T. E. Zant, J. R. Roland, your, and each of your, attorneys, agents, employees, and all persons acting in aid of or in conjunction with you, or any of you, from in any manner agreeing or combining or conspiring together to injure or destroy the trade or business of complainants herein, or to interfere with the manufacture, transportation, or sale by complainants, or by any other person, firm, or corporation, of hats manufactured by complainants; from boycotting or agreeing or attempting to boycott and from declaring or continuing a boycott against complainants or complainants' trade or business or the product of complainants' said factory, or against any person, firm or corporation, for the purpose of preventing or injuring, and from thereby preventing or injuring, the regular operation and conduct of complainants' trade or business or the transportation or sale of or trade in hats manufactured or sold by said complainants, and from abetting, aiding, or assisting in such boycott; from publishing or circulating, in combination, or in pursuance of any conspiracy or agreement to injure or destroy the trade or business of complainants, in writing or orally, any statements or representations advertising or calling the attention of complainants' customers or merchants or tradesmen or the public to any boycott or strike against complainants, or against the product of complainants' said factory, or that, or to the effect that, com-

plainants, complainants' factory, or complainants' goods, or the hats or products made or sold by complainants, or sold by complainants' customers, are or were "unfair," or should not be purchased or dealt in or handled by the public or merchants or tradesmen; from publishing or circulating, in combination, or in pursuance of any conspiracy or agreement to injure or destroy the trade or business of complainants, or for the purpose of injuring or destroying the trade or business of complainants, in writing or orally, statements or representations to customers of complainants, or to dealers in hats, or tradesmen or the public, that complainants' factory, complainants' business, or complainants' hats, or the product of complainants' factory, or either or any of them, are unfair or have been boycotted or are boycotted, or should not be dealt in or with or sold, and from coercing or inducing or attempting to coerce or induce any such dealer, person, firm, or corporation, or the public, not to wear, buy, trade in, deal in, or have in possession, hats or any hat made by complainants, or the product of complainants' factory, for the purpose last aforesaid, and, for like purposes, from threatening any person, firm or corporation with injury or loss to the business or trade of such person, firm or corporation in case such person, firm or corporation should purchase or deal in hats manufactured by complainants, or the product of complainants' said factory; from giving any orders or directions to committees, associations, or others for the performance of any acts or threats hereinbefore enjoined—which commands and injunctions you are respectively required to observe and obey until our said Circuit Court shall make further order in the premises.²⁵

Form No. 26.—*Restraining order to prevent defendants from collecting in crowds at or near complainant's premises; from entering on his premises; from annoying or intimidating his employes, or obstructing their free passage to and from his premises; from using force, violence, intimidation, or annoying language, to cause his employes to quit his service, and other workmen not to enter his employment; from using money in furtherance of the purpose of inducing his employes not to work for him; from picketing his premises with intent to use intimidation, or threats against his employes going to and from their work; and from intimidating the wives and families of the employes at their homes.*

²⁵ *Loewe v California State Federation of Labor*, 139 Cal. Fed. 71.

That the defendants "be and are hereby restrained, and each and every of them, from collecting and attempting to collect in crowds in the street at or near said complainants' premises, consisting of two silk mills,—one in Market Street, at the foot of Jersey Street, in Patterson, N. J., and the other on Railroad avenue, between Grand and Ward streets, and the mill of complainants known as the 'Greater Barnert Mill,' being in the rear thereof, and fronting on Dale avenue, in said city of Paterson, N. J.,—and from entering or attempting to enter complainants' said premises, and from following in the street for the purpose of annoying or intimidating any person employed by complainants, and from obstructing or attempting to obstruct the free passage of such employe or employes of complainants in going to and from complainants' premises, from in any wise threatening or using any coercive language or coercion whatever in order to induce any employe of complainants not to work for complainants, or in any wise to interfere with or annoying by acts or words such employe of complainants against his will, and from in any manner interfering with, hindering, obstructing, or stopping any of the business of complainants or their agents, servants, or employes in the operation of their said plants at Paterson, N. J., and from entering their grounds and premises for the purpose of interfering with, hindering, or obstructing their business, from compelling, inducing, or attempting to compel or induce by threats, intimidation, annoying language, or acts of force or violence, any of the employes of complainants to refuse to or fail to perform their duties as such employes, or from compelling or inducing or attempting to compel or induce by threats, intimidation, annoying language or acts, force or violence, any of the employes of complainants to leave the service of complainants, and from preventing or attempting to prevent any person or persons by threats, intimidation, annoying language or acts, force or violence, from entering the service of complainants and from using money of the said association or other money in furtherance of the purpose of preventing further employes of complainants from returning to their work, and paying money to such employes to induce them to leave, and from doing any act whatever in furtherance of any conspiracy or combination to restrain complainants or its agents or employes in the free and unhindered control of its business, and from ordering, directing, aiding, assisting, or abetting in any manner any person to commit any or either of the acts

aforesaid, and from congregating at or near the said premises of complainants for the purpose of intimidating complainants' employes or from preventing them from rendering their service to complainants, and from inducing or coercing by threats, annoying language or acts, said employes to leave their employment, and from in any manner interfering with complainants in carrying on their business in its usual and ordinary way, and from in any manner interfering with or molesting any person or persons who may be employed by complainants in the operation of its plants, and from collecting either singly or in combination with others in and about the approaches to complainants' said plants for the purposes of picketing or patrolling or guarding the streets, avenues, gates, and approaches to complainants' said property for the purpose of intimidating, threatening, or coercing any of the employes of complainants in going to and from their work and the said plants of complainants, and from congregating at or about any places at said Paterson for the purpose of intimidating, threatening, or coercing any person or persons seeking employment of complainants, and from going either singly or collectively to the homes of complainants' employes, or any of them, for the purpose of intimidating or coercing any or all of them to leave the employ of complainants, or from entering complainants' employment, or from intimidating or in any manner threatening the wives and families of said employes at their said homes, and from conspiring in meetings or otherwise conspiring together by threats or other unlawful coercion to induce or coerce any of the employes of complainants to leave the service of said complainants, or prevent any person by threats, intimidation, force, or violence from entering the service of complainants." ²⁶

Form No. 27.—*Restraining order to prevent defendants from inducing complainant's employes to break their contracts of service; from coercing workmen not to enter his service; from personal molestation and annoyance of persons employed or willing to be employed by complainant; from using violence and intimidation against such persons to prevent them from working for complainant; and from picketing the streets near complainant's premises for the purposes mentioned.*

²⁶ Frank v Herold, 63 N. J. Eq. 443, 52 Atl. 152.

The defendants are restrained "from in any manner knowingly and intentionally causing or attempting to cause, by threats, offers of money, payment of money, offering to pay or the payment of transportation expenses, inducements or persuasions to any employe of the complainant under contract to render service to it to break such contract by quitting such service; from any and all personal molestation of persons willing to be employed by complainant, with intent to coerce such persons to refrain from entering such employment; from addressing persons willing to be employed by complainant against their will, and thereby causing them personal annoyance, with a view to persuade them to refrain from such employment; from loitering or picketing in the streets near the premises of complainant, Nos. 68 and 70 York street, and No. 37 Montgomery street, Jersey City, with intent to procure the personal molestation and annoyance of persons employed or willing to be employed by complainant, and with a view to cause persons so employed to quit their employment, or persons willing to be employed by complainant to refrain from such employment; from entering the premises of complainant, Nos. 68 and 70 York street, Jersey City, against its will, with intent to interfere with its business; from violence, threats of violence, insults, indecent talk, abusive epithets practiced upon any persons without their consent with intent to coerce them to refrain from entering the employment of complainant, or to leave its employment."

Form No. 28.—*Injunction restraining defendants from carrying out a boycott of complainant's business by causing others by means of threats and intimidation to withhold from complainant work which they might otherwise have given him, or to compel him to stop work commenced by him; from publishing or circulating any matter which would tend to injure the business of any one for whom complainant has done, is now, or will hereafter do work, and from in any way hindering complainant by interfering with his business or customers.*

"Ordered by the Circuit Court of Baltimore City, this 11th day of June, 1904, upon the foregoing petition and affidavits, that a writ of injunction be issued as prayed in said petition, upon the filing of a bond by the plaintiff in the penalty of \$5,000, with security

²⁷ Jersey City Printing Company v Cassidy, 63 N. J. Eq. 259, 53 Atl. 230.

to be approved by the clerk of this court; the said writ to enjoin the defendants in this case, and each of them, their and each of their agents, officers, members, representatives, and confederates, from in any manner interfering with or hindering, or attempting directly or indirectly to interfere with, the said plaintiff, John B. Adt, his agents, servants, and employes, in conducting his said business, by following his said delivery wagons in the streets for the purpose of finding where work is to be done; or from going to, or sending any communication, letters, or circulars to, places of business or breweries or manufactories where the plaintiff has done work, or is now doing work, or shall hereafter do work, for the purpose of inducing, persuading, or compelling by threats, or intimidations in any other manner, the owner or owners of such places of business, breweries, or manufactories, their agents, servants, or employes, to withhold or fail to give to the complainant such work as they might otherwise give him, or to compel him to stop any work ordered from or commenced by him; from publishing, printing, writing, or circulating in any manner whatever any matter or thing that would tend to discredit in the eyes of the public, or to injure the business of, any person for whom the plaintiff has done, is now doing, or will hereafter do work, by reason of such work; from in any manner boycotting the said plaintiff or his manufactured goods, or any one for whom the plaintiff has worked, is now working or shall hereafter work, or manufactured articles of such last-named person by reason of such work; and from in any way menacing, hindering, or obstructing the plaintiff by interfering with the business or customers in the full enjoyment of such patronage or business as he might possess independent of such interference.”²⁸

Form No. 29.—*Injunction restraining defendants from conspiring to prevent or hinder the carrying on of complainant's business; from using force, violence, or intimidation, to induce complainant's employes to refuse to perform their duties, or to quit their employment, or to induce other workmen not to enter its service, from congregating at or near its premises or elsewhere with intent to use such means to accomplish such end, or to prevent its employes from reaching their place of work, or returning to their homes; from*

²⁸ My Maryland Lodge v Adt., 100 Md. 238, 59 Atl. 721, 68 L. R. A. 252.

going to the homes of such employes to intimidate them and cause them to quit their employment; from preventing complainant from delivering its product, or other persons from delivering materials to it; from picketing its premises to prevent employes or those seeking employment from going there; from preventing by threats of strike or boycott any persons from dealing with it, and from calling a strike against any person because he deals with complainant.

The defendants "are hereby enjoined absolutely and perpetually from conspiring together unlawfully to prevent said complainant from peaceably and quietly carrying on its business, and from in any manner interfering with, hindering, obstructing or stopping any of the business of said complainant; and from attempting to compel, directly or indirectly, by threats, intimidation, force or violence, violent or abusive language, or any persuasion that is not peaceable, any of the employes of said complainant, to refuse or fail to perform their duties as such employes; and from compelling or inducing, or attempting to compel or induce, by threats, intimidation, force, violence, violent or abusive language, any of the employes of said complainant to cease and abstain from the service of said complainant, and from attempting to keep from the service of complainant any person or persons, by threats, intimidation, force, violence, violent or abusive language; or from preventing or attempting to prevent any person or persons, by threats, intimidation, force, violence, violent or abusive language, from entering upon the service of said complainant; and from congregating at or near the premises of said complainant; or on the streets near and leading thereto, for the purpose of inducing, by threats, either in manner or by words or by violence, or compelling by threats intimidation, violence, and violent or abusive language, the employes of said complainant to fail to perform their services to said complainant as such, or for the purpose of preventing persons desiring so to do from entering upon the service of said complainant; and from congregating at or near the place of work of said complainant's employes, or elsewhere, for the purpose of intimidating or coercing them, by threats, violence, abusive or violent language, or for the purpose of preventing them from reaching complainant's place of work, or to return therefrom to their respective houses or boarding places; and from in any manner interfering with or molesting either by threats, intimidation, violence, abusive or violent language, any of complainant's

employees in going to and from said complainant's works; and from going singly or collectively to the homes or boarding houses or places of residence of said complainant's employees, or any of them, for the purpose of intimidating or coercing any or all of them to leave the employ of complainant, and from carrying out or attempting to carry out any agreement among themselves or any of them, or any combination and agreement with others having for its purpose the accomplishment of any unlawful acts or things hereby prohibited; and from preventing said complainant from delivering its manufacturing product and other materials and supplies from its factory, or from preventing any person or persons from delivering to said complainant's factory any supplies or other articles which it may desire to have delivered to its factory, by threats, intimidation, force or violence and from establishing or maintaining pickets for the purpose of hindering or preventing, by threats, intimidation or violence, in any way, the employees of said complainant and persons seeking its employ, from going into the factory or lumber yard of said complainant; and from preventing or attempting to prevent, by threats of boycott or strike any person or persons from dealing with said complainant or completing any contracts with said complainant, or from purchasing or receiving goods manufactured by said complainant, or from calling out a strike in any plant or factory owned or operated by any other person, because of the fact that such person may purchase supplies or products from said complainant, or sell supplies or materials to said complainant, or by reason of the fact that said person or persons may use in their factory any material manufactured by said complainant, or coming from the plant of said complainant." ²⁰

Form No. 30.—*Injunction restraining defendants from using force, violence, intimidation, opprobrious epithets or ridicule, to prevent complainant's employes from remaining in his service, and other workmen from entering his service; from calling "scab" at workmen going to and from his premises; from picketing or loitering upon his premises; from congregating about such premises or at other places, or boarding trains to prevent workmen in his em-*

²⁰ Piano etc. Workers' International Union of America v Piano etc. Supply Co., 124 Ill. App. 353, 354,

ploy, or willing to enter his service from working for it by intimidation, threats, or undue pressure, and from in any manner, obstructing the regular operation of his business.

It is ordered, adjudged and decreed as follows:

That the said Hiestand Thuma, William Mason, John Pickel, William Zook, William De Carlton, Thomas Brenner, Henry Markley, Charles Gallagher, Frank Thompson, Winfield Gallagher, William Eater and Irwin Shields, and all the members and officers, and their successors, of Lodge No. 339 of the Iron Moulders' Union of Marietta, and all their agents, servants and employes, as well as all persons combining and conspiring with them, their associates and confederates, and all other persons whomsoever known or unknown, be hereby perpetually enjoined and commanded absolutely to desist and refrain from in any way or manner interfering with the employes of the plaintiff and with any person or persons who may hereafter desire or offer to enter its employ, by the use or way of threats, intimidation, personal violence, opprobrious epithets or ridicule, or other means, calculated or intended to prevent such persons from entering or continuing in the employment of the plaintiff, or calculated, or intended to induce any such person or persons to leave the employment of the plaintiff; and also from calling 'scab' or 'scabs,' or any other opprobrious epithet, to persons passing along the streets, and going to or from the works of the plaintiff, and who are in the employ or about to enter the employ of the said plaintiff; from picketing and loitering upon the premises of the plaintiff, or congregating about or in the neighborhood of the same, or on the highways of East Donegal township, or the streets of Marietta, for the purpose of intimidating or interfering with the employes of the plaintiff, or with such persons as desire to enter its employ; from individually or collectively boarding incoming or outgoing railroad trains or cars to and from Marietta, with the object or purpose of inducing men who are in the employ of the plaintiff to quit work, or of preventing, or attempting to prevent, any person or persons who may desire to enter its employ from so doing, by means of threats, intimidation or undue pressure; from giving any directions or orders to committees, associates or otherwise, for the performance of any such acts or threats hereby enjoined, and from in any manner whatever impeding, obstructing or interfering with the regular and unrestrained operation, conduct and management of the business of the

plaintiff, or the employes now in the employ of the plaintiff or that may hereafter be employed by it.

It is further ordered that the aforesaid injunction shall be in force and binding upon all the defendants hereinbefore named, their associates, confederates, and upon all other persons whomsoever who are not named herein, from and after the time when such other persons shall have knowledge of the entry of this order and the existence of this injunction.

It is further ordered and adjudged that the defendants pay the costs of these proceedings.''³⁰

Form No. 31.—*Injunction restraining labor union, its officers and members, from threatening injury to the business of plaintiff's customers or prospective customers if they patronize them; from sending out circulars stating that plaintiffs are under the ban of the union, and that its members will not handle or work building materials from his mills; from imposing or threatening to impose penalties on members to prevent them from handling or working building materials purchased from plaintiffs; and from issuing union labels to other mill owners within the jurisdiction of the union, and vicinity for the purpose of interfering with plaintiff's business.*

“That the defendants (not including L. C. Wick) and each and every of them, their officers, committees, agents, employes, servants, members, associates, and all others that may act in concert with them, or by their direction, each and every one, be restrained and strictly enjoined from interfering and from combining, conspiring, or attempting to interfere, for the purpose of doing injury to plaintiffs in their business, with the sale or contract for sale by the plaintiffs of building materials by representing or causing to be represented in express or implied terms to any customer of the plaintiffs, or to any person or persons or corporation who might become customers of the plaintiffs, that such customers will suffer or are likely to suffer loss or trouble in their business for purchasing or continuing to purchase or contracting for the purchase of building materials from the plaintiffs; or by intimidating or attempting to intimidate by threats, direct or indirect, express or implied, of loss or trouble in business, or otherwise, any persons or

³⁰ Marietta Casting Co. v Thuma, 28 Pa. Co. Ct. 248, 264.

corporation who are now customers or who may hereafter become or desire to become customers of the plaintiffs; or from sending out to any person or persons or corporation who are now customers or who may hereafter become or desire to become customers of the plaintiffs, through the mails, or delivering to them otherwise, any written or printed card, letter, circular, or other notice, stating that members of the United Brotherhood of Carpenters and Joiners will not handle or work millwork or materials coming from mills which fail to comply with regulations of the Carpenters' District Council and that the plaintiffs had failed to comply with an agreement of the Planing Mill Association of Western Pennsylvania with the Carpenters' District Council, or an agreement adopted by the Master Builders' Association and said Council, and requesting such customers or prospective customers of the plaintiffs to have their millwork done by mills that operate under said agreement so that no controversy can arise on account of non-union millwork, or from sending out to such customers or prospective customers of the plaintiffs any card, circular, or other notice of similar character or purpose, directly or indirectly, or from writing or sending through the mails or otherwise, any written or printed card, circular, letter, or other communication, conveying or intending to convey, to any customers or prospective customers of the plaintiffs that the plaintiffs are under the ban of Local No. 500, United Brotherhood of Carpenters and Joiners' of America, or the Carpenters' District Council of Pittsburg, Allegheny, and vicinity, United Brotherhood of Carpenters and Joiners of America, or other trade unions, or of similar import; or from attempting by any scheme, combination, or conspiracy among themselves or with others, to annoy, hinder, or interfere with or prevent any person or persons or corporation from purchasing building materials, or making contracts for the purchase of the same, from the plaintiffs, and from any and all acts, and from the use of any and all ways, means, and methods with a purpose to injure plaintiffs in their business, which (acts, ways, means, and methods) by putting or attempting to put any person or persons or corporation in fear of loss or trouble will tend to hinder, impede, or obstruct the plaintiffs from making sale, or making contracts for sale, of building materials; or from interfering and from combining, conspiring, or attempting to interfere, for said purpose, with the business of the plaintiffs, by the enforcement, under pain of penalties and for-

feitures, of rule 7 of the working rules adopted for the government of local unions under the jurisdiction of the Carpenters' District Council of Pittsburg, Allegheny, and Vicinity, United Brotherhood of Carpenters and Joiners of America, which provides that: "No member shall be allowed to work any material coming from any non-union mill and shall comply with this rule when the local unions are so informed and instructed by the District Council," or by other like coercive rules, the natural and necessary effect of which would be to deter the members of said trades unions or others from working upon buildings or other constructions to which the plaintiffs were furnishing materials, or contractors, builders, or owners of said buildings or other constructions, or others, from purchasing materials from the plaintiffs; or from interfering and from combining, conspiring, or attempting to interfere with the business of the plaintiffs for the purpose of injuring them in their business, by the enforcement of fines or forfeitures, suspension or expulsion from membership in any of the locals within the jurisdiction of the Carpenters' District Council of Pittsburg, Allegheny, and Vicinity, United Brotherhood of Carpenters and Joiners of America, for failure to observe rule 7 of the working rules adopted for the government of local unions under the jurisdiction of said Carpenters' District Council of Pittsburg, Allegheny, and Vicinity, United Brotherhood of Carpenters and Joiners of America, or for failure to observe any of the rules adopted and in force in that union, or that may hereafter be adopted, which would by coercion of said members interfere with the business of the plaintiffs, or from otherwise restraining, coercing, and intimidating any one or more of the members of said union for said purpose from working for any contractors, builders, owners, or other persons because they are doing or desire to do business with the plaintiffs; or from interfering and from combining, conspiring, or attempting to interfere with the business of the plaintiffs by the issue of union labels to any mill within the jurisdiction of the Carpenters' District Council of Pittsburg, Allegheny, and Vicinity, United Brotherhood of Carpenters and Joiners of America; such issue of labels being made for the purpose of interfering with the business of the plaintiffs. From the doing of any and all of which acts and things, for the purpose of injuring plaintiffs in their business and thereby compelling them to unionize their mill or have such injury continued, the said defendants (not including L. C. Wick) and

each and every of them, their officers, committees, agents, employes, servants, members, associates, and all others that may act in concert with them, or by their direction, are hereby enjoined and restrained.”³¹

Form No. 32.—*Injunction against interference with transportation of interstate commerce.*

“That the said defendants, Albert G. Blair, Jacob S. Morris, the Pennsylvania Company, the Wheeling & Lake Erie Railway Company, the Lake Shore & Michigan Southern Railway Co., the Michigan Central Railroad Company, the Cincinnati, Hamilton & Dayton Railroad Company, the Columbus, Hocking Valley & Toledo Railway Company, the Toledo & Ohio Central Railway Company, the Cincinnati, Jackson & Mackinaw Railway Company, and each of them, and their officers, agents, servants, and employes, be, and they are hereby, enjoined and restrained from refusing to offer and extend to said the Toledo, Ann Arbor & North Michigan Railway Company the same equal facilities for interchange of traffic on interstate business between said railway companies as are enjoyed by other railway companies, and from refusing to receive from said the Toledo, Ann Arbor & North Michigan Railway company cars billed from points in one state to points in another state, which may be offered to said defendant companies by the complainant; and from refusing to deliver in like manner to said complainant cars which may be billed over complainant’s line from points in one state to points in other states. Ordered that a writ of injunction be issued out of and under the seal of this court as prayed for in the bill of complainant to remain in force under the further order of the court herein.”³²

Form No. 33.—*Injunction against interference with the transportation of interstate commerce and mails.*

The injunction commanded the defendants “and all persons combining and conspiring with them, and all other persons whosoever, absolutely to desist and refrain from in any way or manner interfering with, hindering, obstructing, or stopping any of the business of any of the following named railroads (specifically naming the

³¹ Purvis v United Brotherhood of Carpenters & Joiners, 214 Pa. St. 344, 63 Atl. 585, 112 Am. St. Rep. 272, 12 L. R. N. S. 242.

³² Toledo etc. R. Co. v Pennsylvania Co., 54 Fed. 745.

various roads named in the bill) as common carriers of passengers and freight between or among any states of the United States, and from in any way or manner interfering with, hindering, obstructing, or stopping any mail trains, express trains, or other trains, whether freight or passenger, engaged in interstate commerce, or carrying passengers or freight between or among the states; and from in any manner interfering with, hindering, or stopping any trains carrying the mail; and from in any manner interfering with, hindering, obstructing, or stopping any engines, cars, or rolling stock of any of said companies engaged in interstate commerce, or in connection with the carriage of passengers or freight between or among the states; and from in any manner interfering with, injuring, or destroying any of the property of any of said railroads engaged in, or for the purpose of, or in connection with interstate commerce, or the carriage of the mails of the United States, or the transportation of passengers or freight between or among the states; and from entering upon the grounds or premises of any of said railroads for the purpose of interfering with, hindering, obstructing, or stopping any of said mail trains, passenger or freight trains engaged in interstate commerce, or in the transportation of passengers or freight between or among the states, or for the purpose of interfering with, injuring, or destroying any of said property so engaged in or used in connection with interstate commerce, or the transportation of passengers or property between or among the states; and from injuring or destroying any part of the tracks, roadbed, or road or permanent structures of said railroads; and from injuring, destroying, or in any way interfering with any of the signals or switches of any of said railroads; and from displacing or extinguishing any of the signals of any of said railroads; and from spiking, locking, or in any manner fastening any of the switches of any of said railroads; and from uncoupling or in any way hampering or obstructing the control by any of said railroads of any of the cars, engines, or parts of trains of any of said railroads engaged in interstate commerce or in the transportation of passengers or freight between or among the states, or engaged in carrying any of the mails of the United States; and from compelling or inducing, or attempting to compel or induce, by threats, intimidation, persuasion, force, or violence, any of the employes of any of said railroads to refuse or fail to perform any of their duties as employes of any of said railroads in connection

with the interstate business or commerce of such railroads or the carriage of the United States mail by such railroads, or the transportation of passengers or property between or among the states; and from compelling or inducing, or attempting to compel or induce, by threats, intimidation, force, or violence any of the employes of any of said railroads who are employed by such railroads, and engaged in its service in the conduct of interstate business or in the operation of any of its trains carrying the mail of the United States, or doing interstate business, or the transportation of passengers and freight between and among the states, to leave the service of such railroads; and from preventing any person whatever, by threats, intimidation, force, or violence from entering the service of any of said railroads, and doing the work thereof, in the carrying of the mails of the United States or the transportation of passengers and freight between and among the states; and from doing any act whatever in furtherance of any conspiracy or combination to restrain either of said railroad companies or receivers in the free and unhindered control and handling of interstate commerce over the lines of said railroads, and of transportation of persons and freight between and among the states; and from ordering, directing, aiding, assisting, or abetting in any manner whatever any person or persons to commit any or either of the acts aforesaid.

“And it is further ordered that the aforesaid injunction and writ of injunction shall be in force and binding upon such of said defendants as are named in said bill from and after the service upon them severally of said writ, by delivering to them severally a copy of said writ, or by reading the same to them, and the service upon them respectively of the writ of subpoena herein, and shall be binding upon said defendants, whose names are alleged to be unknown, from and after the service of such writ upon them respectively, by the reading of the same to them, or by the publication thereof by posting or printing, and, after service of subpoena upon any of said defendants named herein, shall be binding upon said defendants and upon all other persons whatsoever who are not named herein from and after the time when they shall severally have knowledge of the entry of such order and the existence of said injunction.”³³

³³ In re Debs, 158 U. S. 15 Sup. Ct. 900, 39 L. ed. 1092.

Form No. 34.—*Injunction to restrain a conspiracy to procure the discharge of complainants from employment, and to prevent their obtaining other employment by threats of injury to the business of their employers or possible employers.*

“It is ordered, adjudged, and decreed as follows, viz.: That the defendants, and each and every of them, their committees, agents and servants, be restrained and strictly enjoined from interfering and from combining, conspiring, or attempting to interfere with the employment of the plaintiffs, or any one or more of them, by representing or causing to be represented, in express or implied terms, to any employer of said plaintiffs, or any one or more of them, or to any person or persons or corporation who might become employers of any of the plaintiffs, that such employers will suffer or are likely to suffer loss or trouble in their business for employing or continuing to employ said plaintiffs or plaintiff, or by intimidating or attempting to intimidate, by threats, direct or indirect, express or implied, of loss or trouble in business or otherwise, any person or persons or corporation who now are employing or may hereafter employ or desire to employ the plaintiffs, or any one or more of them, or by attempting, by any scheme, combination, or conspiracy among themselves or with others, to annoy, hinder, or interfere with or prevent any person or persons or corporation from employing or continuing to employ said plaintiffs, or any one or more of them, and from any and all acts, and from the use of any and all ways, means and methods, which acts, ways, means, and methods, by putting or attempting to put any person or persons or corporation in fear of loss or trouble, will tend to hinder, impede, or obstruct the plaintiffs, or any one or more of them, from securing employment, or from continuing in employment, and that defendants pay the costs of this suit.”³⁴

³⁴ *Erdman v Mitchell*, 207 Pa. St. 79, 56 Atl. 327, 99 Am. St. Rep. 783, 63 L. R. A. 534.

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